

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JAKIL S.P.A.

*Plaintiff*

08 CIV 5613 (DC)

-against-

AGRIMPEX CO. LTD.,

*Defendant.*

-----X

**DECLARATION OF GEORGE M CHALOS**

I, **GEORGE M. CHALOS**, having been duly sworn, deposes and states the following under the penalty of perjury pursuant to Section 1746 of Title 28 of the United States Code:

1. I am an individual of sound mind and body, and have never been convicted of a crime of moral turpitude.
2. I am a principal in the law firm of Chalos & Co, P.C., counsel for the Plaintiff, JAKIL S.P.A. (hereinafter "JAKIL").
3. I submit this declaration in support of Plaintiff, JAKIL's, opposition to defendant's motion to vacate the pending maritime attachment.
4. I make this declaration based upon my personal knowledge; my discussions with our client and their authorized representatives; my own investigation; and review of the client's official company records which have been provided to me.
5. Attached hereto as Exhibit 1 is a true and accurate copy of the first contract (no. DFS/56201) between the parties dated June 27, 2007.

6. This first contract required defendant to provide a bulk “cargo” to be loaded at “one (1) Italian Adriatic port” in the range of Venice/Ancona/Ravenna where a vessel with up to 31 foot salt water arrival draft could be berthed.
7. This cargo was to be provided on a “C+F” basis; meaning “cost and freight” basis. “Cost and freight” is an internationally accepted commercial term which, under the circumstances, required the defendant to arrange for and obtain a vessel of the type specified in the contract, as well as to pay to transport the cargo to the discharge port. *See In re Daewoo International (America) Corp. v. Daewoo International (America) Corp.*, 2001 U.S. Dist. LEXIS 19796 (S.D.N.Y. Nov. 29, 2001).
8. Payment for said cargo was to be made at or about the time of arrival of the vessel at the discharge port, and no later than the commencement of discharge of the cargo from the vessel.
9. The parties further agreed that the cargo was to be discharged at an average rate of USD 5,000 MT/day for a four 4 (hatch) vessel with the rate to be adjusted as necessary and appropriate. The parties further agreed both demurrage and dispatch rates to be paid if the agreed vessel discharging rate was exceeded or, in the alternative, not met.
10. The parties further agreed that the vessel the subject cargo was to be loaded upon was to be “Classed with the highest Lloyds register or equivalent” Classification Society.
11. Any costs or expenses incurred as a result of loading said cargo on to an overage vessel were to be strictly for the account of defendant.
12. Attached hereto as Exhibit 2 is a true and accurate copy of the second contract (no. DFS/56307) between the parties dated July 3, 2007.

13. This contract required defendant to provide a bulk “cargo” to be loaded at “one (1) Italian Adriatic port” in the range of Venice/Ancona/Ravenna where a vessel with up to 31 foot salt water arrival draft could be berthed.
14. This cargo was also to be provided on a “C+F” basis.
15. Payment for said cargo was to be made at or about the time of arrival of the vessel at the discharge port, and no later than the commencement of discharge of the cargo from the vessel.
16. The parties further agreed that the cargo was to be discharged at an average rate of USD 5,000 MT/day for a four 4 (hatch) vessel with the rate to be adjusted as necessary and appropriate. The parties further agreed both demurrage and dispatch rates to be paid if the agreed vessel discharging rate was exceeded or, in the alternative, not met.
17. The parties further agreed that the vessel the subject cargo was to be loaded upon was to be “Classed with the highest Lloyds register or equivalent” Classification Society.
18. Any costs or expenses incurred as a result of loading said cargo on to an overage vessel were to be strictly for the account of defendant.
19. Attached hereto as Exhibit 3 is a true and accurate copy of the third contract (no. DFS/56407) between the parties dated July 10, 2007.
20. This third contract required the defendant to provide a bulk “cargo” to be loaded at “one (1) Italian Adriatic port” in the range of Venice/Ancona/Ravenna where a vessel with up to 31 foot salt water arrival draft could be berthed.
21. This cargo was also to be provided on a “C+F” basis.

22. Payment for said cargo was to be made at or about the time of arrival of the vessel at the discharge port, and no later than the commencement of discharge of the cargo from the vessel.
23. The parties further agreed that the cargo was to be discharged at an average rate of USD 5,000 MT/day for a four 4 (hatch) vessel with the rate to be adjusted as necessary and appropriate. The parties further agreed both demurrage and dispatch rates to be paid if the agreed vessel discharging rate was exceeded or, in the alternative, not met.
24. The parties further agreed that the vessel the subject cargo was to be loaded upon was to be "Classed with the highest Lloyds register or equivalent" Classification Society.
25. Any costs or expenses incurred as a result of loading said cargo on to an overage vessel were to be strictly for the account of defendant.
26. Attached hereto as Exhibit 4 is a true and accurate copy of the first contract (no. DFS/56607) between the parties dated July 17, 2007.
27. This fourth contract required the defendant to provide a bulk "cargo" to be loaded at "one (1) Italian Adriatic port" in the range of Venice/Ancona/Ravenna where a vessel with up to 31 foot salt water arrival draft could be berthed.
28. This cargo was also to be provided on a "C+F" basis.
29. Payment for said cargo was to be made at or about the time of arrival of the vessel at the discharge port, and no later than the commencement of discharge of the cargo from the vessel.
30. The parties further agreed that the cargo was to be discharged at an average rate of USD 5,000 MT/day for a four 4 (hatch) vessel with the rate to be adjusted as

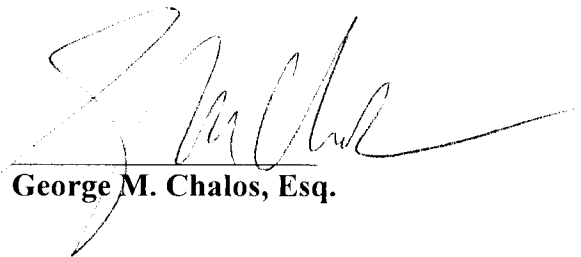
necessary and appropriate. The parties further agreed both demurrage and dispatch rates to be paid if the agreed vessel discharging rate was exceeded or, in the alternative, not met.

31. The parties further agreed that the vessel the subject cargo was to be loaded upon was to be "Classed with the highest Lloyds register or equivalent" Classification Society.
32. Any costs or expenses incurred as a result of loading said cargo on to an overage vessel were to be strictly for the account of defendant.
33. Attached hereto as Exhibit 5 is a true and accurate copy of the first contract (no. DFS/56907) between the parties dated July 27, 2007.
34. This fifth contract required defendant to provide a bulk "cargo" to be loaded at "one (1) Italian Adriatic port" in the range of Venice/Ancona/Ravenna where a vessel with up to 31 foot salt water arrival draft could be berthed.
35. This cargo was also to be provided on a "C+F" basis.
36. Payment for said cargo was to be made at or about the time of arrival of the vessel at the discharge port, and no later than the commencement of discharge of the cargo from the vessel.
37. The parties further agreed that the cargo was to be discharged at an average rate of USD 5,000 MT/day for a four 4 (hatch) vessel with the rate to be adjusted as necessary and appropriate. The parties further agreed both demurrage and dispatch rates to be paid if the agreed vessel discharging rate was exceeded or, in the alternative, not met.
38. The parties further agreed that the vessel the subject cargo was to be loaded upon was to be "Classed with the highest Lloyds register or equivalent" Classification Society.

39. Any costs or expenses incurred as a result of loading said cargo on to an overage vessel were to be strictly for the account of defendant.
40. Attached hereto as Exhibit 6 is a true and complete copy of the transcript of the oral argument and corresponding ruling issued by Judge Preska in the *Noble Resources v. Yugtransitservis, et. al.* matter (08 CV 3876)(LAP).
41. Attached hereto as Exhibit 7 is a true and complete copy of the transcript of the oral argument and corresponding ruling issued by Judge Lynch in the *Noble Resources v. Sarl Quest Import* matter (08 CV 3587)(GEL).
42. Defendant has failed to fully honor its obligations, as is even acknowledged in the declaration of Mr. Philippas submitted in response to Defendant's motion to vacate.

I hereby declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and accurate to the best of my knowledge.

Dated: September 5th, 2008  
Oyster Bay, New York



**George M. Chalos, Esq.**

## EXHIBIT 1

REF: 05113873

28/06/2007 15:08 FROM

+3902876516 PG: 882

28 JUN 2007 12:49

JAKIL SPA

NR. 724

P. 2/4

**Agrimpex Co. Limited**

Regal House, 1138 High Road, London, N28 0EA  
 Telephone: 020 2446 0921 Fax: 020 2446 7116 Telex: 236141 AGRICO G.  
 e-mail: trade@agripex.co.uk

Contract of Sale No. DFS/58207

Date 27th June 2007

Buyer  
 Jakil SPA  
 Foro Buonaparte, 68  
 20121 Milano  
 Italy

Dear Sirs,

We confirm having sold to you on 27/06/2007 the following:-

**COMMODITY:** Sudanesse durum feterina 2005/2006 and/or 2006/2007 crop at sellers option cleaned to within maximum 3% admixture, maximum 0.50% Tannin in sound good condition at time and place of shipment.  
 Quality/condition/description all final as per certificate/s issued at time of shipment by SGS or their agents in Sudan.  
 Delivered weight

**QUANTITY:** One cargo/cargoes 20,000 Mt 10% more or less at sellers option and at contract price.

**SHIPMENT:** July / August 2007 from origin.

**PACKING:** In bulk.

**PRICE:** US\$ 230 (Two hundred and thirty US Dollars) per metric ton.  
 C+R Free Out one Italian Adriatic port out of Venice/Ancona/Ravenna at buyers option, where buyers guarantee berth to accommodate vessel upto 31' feet swd. In the event buyers want additional ports, then this will be as per rates stipulated in the Charter Party which shall be for buyers account.  
 Discharge port to be declared at sellers first demand but not later than commencement of loading of vessel.

**PAYMENT:** 100% cash against documents on presentation in Italy with payment latest on arrival of vessel/s at discharge port and prior commencement of discharge by T/T. T/T charges for buyers account.  
 Should documents be presented at buyers bank before 11:00 hrs AM then sellers will be credited with value within 48 hours, otherwise within 72 hours value.

**AGRIMPEX CO LIMITED**

(Cont/d...)

Page 1

Directors: F. G. Phillips, K. L. Phillips. Registration number: 81378076


 JAKIL SPA



5113873

28/05/2007 15:09 FROM

+3982876516 PG:003

28. GIU. 2007 12.49

IAKIP S.p.A.

12.724 12.346

**Agrimpex Co. Limited**

Regal House, 1135 High Road, London, N20 0EA  
 Telephone: 020 8446 6921 Fax: 020 8446 7116 Telex: 296142 AGRICO G.  
 e-mail: trade@agrimpex.co.uk

Contract of Sale No. DFS/56207

Date 27th June 2007

**PAYMENT  
CONT'D.....**

In the event vessel/s arrive prior presentation of shipping documents sellers have the option to either ask buyers to take delivery on first class bank guarantee as required by owners of vessel pending presentation of shipping documents. The relative charges of such bank guarantee for sellers account, or alternatively 100% cash latest on arrival of vessel/s before breaking bulk against presentation of original invoice, insurance certificate and indemnity letter for allowing the discharge of the goods without production of B/Ls.

Such letter of indemnity to be confirmed directly from vessel agents to the buyers. This confirmation to reach buyers before payment is effected and then cargo will be released against presentation of the original letter of indemnity to vessels agents.

**DISCHARGE:**

Buyers to discharge goods at their risk and expenses at the average rate of 5,000 MT basis 4 hatches, in the case of 2 hatches or less discharging rate to be adjusted/reduced pro rata if vessel singledecker/bulkcarrier, or at the rate of 1,500 Mt if vessel twendecker per weather working day of 24 consecutive hours SSHEX unless used and prorata. If used only time actually worked to count as laytime.

Time at first disport to start counting as from 08.00 AM hours the next working day after presentation of N.O.R. given during ordinary office hours. WIBON/WIPON/WIFPON/WICCON.

Demurrage as per C/P rate for buyers account. Despatch to be half of demurrage.

All other terms and conditions not in conflict with the above as per governing Charter Party.

**OTHER TERMS/  
CONDITIONS:**

- 1) - All export duties and/or taxes and/or levies present and/or future are for sellers account.
- 2) - All import duties and/or taxes and/or levies present and/or future are for buyers account.
- 3) - Buyers have the exclusivity on performing vessel/s at discharge port.
- 4) - Sellers guarantee provision on EUR 1 certificate at discharge port before completion of discharge and a copy of phytosanitary certificate on board vessel.

**AGRIPEX CO LIMITED**

(Cont'd...)

Page 2

Directors P. C. Philippou, K. L. Philippou. Registration number: 91370674

IAKIP S.p.A.

05113873

28/06/2007 15:18 FROM

+3982876516 PG:684

28 JUN 2007 12:50

WIKI SPA

18.724 P. 4/4

## Agrimpex Co. Limited

Royal House, 1138 High Road, London, N20 9LA  
Telephone: 020 8446 6921 Fax: 020 8446 7116 Telex: 266142 AGRICO G.  
e-mail: [trading@agrimpex.co.uk](mailto:trading@agrimpex.co.uk)

Contract of Sale No. DFS/56207

Date 27th June 2007

### OTHER TERMS/ CONDITIONS CONT'D.....

- 5) - Fumigation certificate
- 6) - Vessel/s to be singledecker/bulkcarrier/twendecker classed highest Lloyds register or equivalent. Vessel/s over 20 years old is/are acceptable in which case overage premium to be for sellers account as per Official Lloyds London Schedule.
- 7) - In the event that the quantity shown on the EUR 1 certificate is higher than that shown on B/L quantity, buyers to accept same.

All other terms, conditions and rules not in contradiction with the above, as per GAFTA contract 51 including the Arbitration Rule form No: 125 (of which the parties admit that they have knowledge and notice) apply to this contract, the details given shall be taken as having been written into such form in the appropriate place.

The validity of this contract will be unaffected by the non return of the counter confirmation duly signed by buyers.

SELLERS

~~AGRIMPEX CO LIMITED~~

BUYERS

~~WIKI SPA~~

Effective 1<sup>st</sup> January 2006

# Gafta No.61

Copyright  
THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT FOR MEDITERRANEAN AND MOROCCO IN BULK OR BAGS CARGOES TALE QUALE - CIF TERMS

\* delete/specify as applicable

Date .....

1 **SELLERS** .....2  
3 **INTERVENING AS BROKERS** .....4  
5 **BUYERS** .....

6 have this day entered into a contract on the following terms and conditions.

7  
8 1. **GOODS**- a cargo of .....  
9 shipped in bulk and/or bags. If in bags, then the bags to be of suitable strength to withstand ordinary wear and tear to port of  
10 destination. Such bags to be taken and paid for as goods.

11  
12 2. **QUANTITY**- ..... units, 5% more or less.  
13 Sellers have the option of shipping a further 5% more or less on contract quantity, excess or deficiency over the above 5% to be  
14 settled at the CIF price on the date of the last bill of lading, and on the quantity thereof; value to be fixed by arbitration, unless  
15 mutually agreed

16  
17 3. **PRICE AND DESTINATION** - At .....  
18 \* per tonne of 1000 kilograms }  
19 } gross weight, cost, insurance and freight to .....  
20 \* per ton of 1016 kilograms or 2240 lbs. }

21  
22 4. **BROKERAGE** ..... per tonne, to be paid by Sellers on the mean contract quantity, goods lost or not  
23 lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract under the terms of  
24 the Prohibition Clause. Brokerage shall be due on the day shipping documents are exchanged or, if the goods are not  
25 appropriated then brokerage shall be due on the 30th consecutive day after the last day for appropriation.

26  
27 5. **QUALITY**-  
28 \* **Warranted to contain** ..... at time and place of discharge.

29  
30 \* **Natural weight of** ..... kilograms per hectolitre guaranteed at time and place of  
31 discharge, to be ascertained according to GAFTA Sampling Rules No.124, or other accepted authority, and any allowances  
32 determined to be allowed for off contract price, in accordance with GAFTA Sampling Rules No. 124.

33  
34 \* **Admixture Barley**- Any admixture of dirt and/or other foreign substance over ..... % to be allowed for by  
35 Sellers at contract price, but any pulse, seed or grain other than Barley to be reckoned as foreign substances at half their  
36 quantities.

37 \* **Other Grain and Seed**- Any admixture of dirt and/or other foreign substance over ..... % to be allowed for by  
38 Sellers at contract price. The percentage of admixture to be determined by GAFTA, or its duly appointed Analyst.

39  
40 \* **Official** ..... certificate of inspection, or certification of inspection of ..... at time and place of  
41 loading into the ocean carrying vessel, shall be final as to quality. The Buyers shall not be entitled to reject a tender of a  
42 higher grade of grain of the same colour and description.

43 \* **F.A.Q.** (fair average quality) of the season's shipment at time and place of loading, to be assessed upon the basis of, and by  
44 comparison with the GAFTA F.A.Q. standard of the month during which the bill of lading is dated. In the event of no F.A.Q.  
45 Standard being established by the Association, the Arbitrator(s) shall in his/their discretion decide what is the fair average  
46 quality. An average sample of the delivery shall be taken and sealed jointly at the port of discharge by the representatives of  
47 the shipper and the representatives of the holders of the bill of lading or shipper's delivery order, and shall be forwarded  
48 immediately to the Association for the purposes of establishing the F.A.Q. standard. The expenses of such sampling and  
49 forwarding shall be paid half by the Receiver and half by the Sellers. Place of shipment under this contract shall be

understood as the port or group of ports adopted by the appointed Standards Committee in making the Standard. If the difference between the delivery and the F.A.Q. Standard shall not amount to 0.50% on contract price, no allowance for quality shall be due; otherwise the Buyers shall be entitled to the full difference in value.

\* **Sample**, at time and place of shipment about as per sealed sample marked ..... in possession of; ..... the word "about" when referring to quality shall mean the equivalent of 0.50% on contract price.

Difference in quality shall not entitle Buyers to reject except under the award of arbitrator(s) or board of appeal, as the case may be, referred to in the Arbitration Rules specified in the Arbitration Clause.

**Condition**- Shipment shall be made in good condition. Should the goods arrive out of condition, due regard shall be made for the time of the year in which the shipment took place. The fact of the goods so arriving shall not necessarily be sufficient proof of an improper shipment.

6. **PERIOD OF SHIPMENT**- as per bill(s) of lading dated or to be dated ..... The bill(s) of lading to be dated when the goods are actually on board. Date of the bill(s) of lading shall be accepted as proof of date of shipment in the absence of evidence to the contrary. In any month containing an odd number of days, the middle day shall be accepted as being in both halves of the month.

7. **SALES BY NAMED VESSELS** – For all sales by named vessels, the following shall apply: -

- (a) Position of vessel is mutually agreed between Buyers and Sellers;
- (b) The word "now" to be inserted before the word "classed" in the Ship's Classification Clause;
- (c) Appropriation Clause cancelled if sold "shipped".

8. **SHIP'S CLASSIFICATION** - Shipment from ..... by first class mechanically self-propelled vessel(s) suitable for the carriage of the contract goods, classed in accordance with the Institute Classification Clause of the International Underwriting Association in force at time of shipment, excluding tankers and vessels which are either classified in Lloyd's Register or described in Lloyd's Shipping Index as "Ore/Oil" vessels.

9. **EXTENSION OF SHIPMENT**- The contract period for shipment, if such be 31 days or less, shall be extended by an additional period of not more than 8 days, provided that Sellers serve notice claiming extension not later than the next business day following the last day of the originally stipulated period. The notice need not state the number of additional days claimed. Sellers shall make an allowance to Buyers, to be deducted in the invoice from the contract price, based on the number of days by which the originally stipulated period is exceeded, in accordance with the following scale:-

- 1 to 4 additional days, 0.50%;
- 5 or 6 additional days, 1%;
- 7 or 8 additional days 1.50% of the gross contract price.

If, however, after having served notice to Buyers as above, Sellers fail to make shipment within such 8 days, then the contract shall be deemed to have called for shipment during the originally stipulated period plus 8 days, at contract price less 1.50%, and any settlement for default shall be calculated on that basis. If any allowance becomes due under this clause, the contract price shall be deemed to be the original contract price less the allowance and any other contractual differences shall be settled on the basis of such reduced price.

10. **APPROPRIATION**-

(a) Notice of appropriation shall state the vessel's name, the approximate weight shipped, and the date or the presumed date of the bill of lading.

(b) The notice of appropriation shall within 10 consecutive days, (or if shipped from a Moroccan port 7 consecutive days), from the date of the bill(s) of lading be served by or on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers named in the contract. The Non-Business Days Clause shall not apply.

(c) Notice of appropriation shall, within the period stated in sub-clause (b) be served by or on behalf of subsequent Sellers on their Buyers or on the Selling Agent or Brokers named in the contract, but if notice of appropriation is received by subsequent Sellers on the last day or after the period stated in sub-clause (b) from the date of the bill of lading, their notice of appropriation shall be deemed to be in time if served: -

(1) On the same calendar day, if received not later than 1600 hours on any business day, or

(2) Not later than 1600 hours on the next business day, if received after 1600 hours on a non-business day.

(d) A notice of appropriation served on a Selling Agent or Brokers named in the contract shall be considered an appropriation served on Buyers. A Selling Agent or Brokers receiving a notice of appropriation shall serve like notice of appropriation in accordance with the provisions of this clause. Where the Shipper or subsequent Sellers serves the notice of appropriation on the Selling Agent, such Selling Agent may serve notice of appropriation either direct to the Buyers or to the Brokers.

(e) The bill of lading date stated in the notice of appropriation shall be for information only and shall not be binding, but in fixing the period laid down by this clause for serving notices of appropriation the actual date of the bill of lading shall prevail.

(f) Every notice of appropriation shall be open to correction of any errors occurring in transmission, provided that the sender is not responsible for such errors, and for any previous error in transmission which has been repeated in good faith.

(g) Should the vessel arrive before receipt of the appropriation and any extra expenses is incurred thereby, such expenses shall be borne by Sellers.

(h) When a valid notice of appropriation has been received by Buyers, it shall not be withdrawn except with their consent.

(i) In the event of less than 95 tonnes being tendered by any one vessel Buyers shall be entitled to refund of any proved extra expenses for sampling, analysis and lighterage incurred thereby at port of discharge.

## 11. PAYMENT-

(a) **Payment** ..... % of invoice amount by cash in .....  
in exchange for and on presentation of shipping documents.

(b) **Shipping documents** – shall consist of - 1. Invoice. 2. Full set(s) of on board Bill(s) of Lading and/or Ship's Delivery Order(s) and/or other Delivery Order(s) in negotiable and transferable form. Such other Delivery Order(s) if required by Buyers, to be countersigned by the Shipowners, their Agents or a recognised bank. 3. Policy (ies) and/or Insurance Certificate(s) and/or Letter(s) of Insurance in the currency of the contract. The Letter(s) of Insurance to be certified by a recognised bank if required by Buyers. 4. Other documents as called for under the contract. Buyers agree to accept documents containing the Chamber of Shipping War Deviation Clause and/or other recognised official War Risk Clause.

(c) In the event of shipping documents not being available when called for by Buyers, or on arrival of the vessel at destination, Sellers shall provide other documents or an indemnity entitling Buyers to obtain delivery of the goods and payment shall be made by Buyers in exchange for same, but such payment shall not prejudice Buyers' rights under the contract when shipping documents are eventually available.

(d) Should Sellers fail to present shipping documents or other documents or an indemnity entitling Buyers to take delivery, Buyers shall take delivery under an indemnity provided by themselves and shall pay for the other documents when presented. Any reasonable extra expenses, including the costs of such indemnity or extra charges incurred by reason of the failure of Sellers to provide such documents, shall be borne by Sellers, but such payment shall not prejudice Buyers' rights under the contract when shipping documents are eventually available.

(e) Should shipping documents be presented with an incomplete set of bill(s) of lading or should other shipping documents be missing, payment shall be made provided that delivery of such missing documents is guaranteed, such guarantee to be countersigned, if required by Buyers, by a recognised bank.

(f) Costs of collection shall be for account of Sellers, but if Buyers demand presentation only through a bank of their choice, in that event any additional collection costs shall be borne by Buyers.

(g) No obvious clerical error in the documents shall entitle Buyers to reject them or delay payment, but Sellers shall be responsible for all loss or expense caused to Buyers by reason of such error and Sellers shall on request furnish an approved guarantee in respect thereto.

(h) Amounts payable under this contract shall be settled without delay. If not so settled, either party may notify the other that a dispute has arisen and serve a notice stating his intention to refer the dispute to arbitration in accordance with the Arbitration Rules.

(i) **Interest** – If there has been unreasonable delay in any payment, interest appropriate to the currency involved shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which shall be settled by arbitration. Otherwise interest shall be payable only where specifically provided in the terms of the contract or by an award of arbitration. The terms of this clause do not override the parties' contractual obligation under sub-clause (a).

12. **INSURANCE**- Sellers shall provide insurance on terms not less favourable than those set out hereunder, and as set out in detail in GAFTA Insurance Terms No.72 viz:-

(a) **Risks Covered**:-

Cargo Clauses (WA) with average payable, with 3% franchise or better terms - Section 2 of Form 72

War Clauses (Cargo) - Section 4 of Form 72

Strikes, Riots and Civil Commotions Clauses (Cargo) - Section 5 of Form 72

(b) **Insurers** - The insurance to be effected with first class underwriters and/or companies who are domiciled or carrying on business in the United Kingdom or who, for the purpose of any legal proceedings, accept a British domicile and provide an address for service of process in London, but for whose solvency Sellers shall not be responsible.

(c) **Insurable Value** - Insured amount to be for not less than 2% over the invoice amount, including freight when freight is payable on shipment or due in any event, ship and/or cargo lost or not lost, and including the amount of any War Risk premium payable by Buyers.

(d) **Freight Contingency** - When freight is payable on arrival or on right and true delivery of the goods and the insurance does not include the freight, Sellers shall effect insurance upon similar terms, such insurance to attach only as such freight becomes payable, for the amount of the freight plus 2%, until the termination of the risk as provided in the above mentioned clauses, and shall undertake that their policies are so worded that in the case of a particular or general average claim the Buyers shall be put in the same position as if the C.I.F. value plus 2% were insured from the time of shipment.

(e) **Certificates/Policies** - Sellers shall give all policies and/or certificates and/or letters of insurance provided for in this contract, (duly stamped if applicable) for original and increased value (if any) for the value stipulated in (c) above. In the event of a certificate of insurance being supplied, it is agreed that such certificate shall be exchanged by Sellers for a policy if and when required and such certificate shall state on its face that it is so exchangeable. If required by Buyers, letter(s) of insurance shall be guaranteed by a recognised bank, or by any other guarantor who is acceptable to Buyers.

(f) **Total Loss** - In the event of total or constructive total loss, or where the amount of the insurance becomes payable in full, the insured amount in excess of 2% over the invoice amount shall be for Sellers' account and the party in possession of the policy (ies) shall collect the amount of insurance and shall thereupon settle with the other party on that basis.

(g) **Currency of Claims** - Claims to be paid in the currency of the contract.

(h) **War and Strike Risks Premiums** – Any premium in excess of 0.50% to be for account of Buyers. The rate of such insurance not to exceed the rate ruling in London at time of shipment or date of vessel's sailing whichever may be adopted by underwriters. Such excess premium shall be claimed from Buyers, wherever possible, with the Provisional Invoice, but in no case later than the date of vessel's arrival, or not later than 7 consecutive days after the rate has been agreed with underwriters, whichever may be the later, otherwise such claim shall be void unless, in the opinion of Arbitrators, the delay is justifiable. Sellers' obligation to provide War Risk Insurance shall be limited to the terms and conditions in force and generally obtainable in London at time of shipment.



(i) Where Sellers are responsible for allowances or other payments to Buyers under Rye Terms or other contractual terms, (and which risks are also covered by the insurance provided by Sellers), the Buyers, on receipt of settlement, shall immediately return to Sellers the insurance documents originally received from them and shall, if required, subrogate to Sellers all right of claim against the Insurers in respect of such matters.

13. **DUTIES, TAXES, LEVIES, ETC.** – All export duties, taxes, levies, etc., present or future, in country of origin, shall be for Sellers' account. All import duties, taxes, levies, etc., present or future, in country of destination, shall be for Buyers' account.

14. **DISCHARGE-** Ship to discharge according to the custom of the port. Ship to discharge at the rate of .....  
If documents are tendered which do not provide for discharge as above, or contain contrary stipulations, Sellers to be responsible to Buyers for all extra expenses incurred thereby.

15. **WEIGHING-** the terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this contract. Unless otherwise agreed, final settlement shall be made on the basis of gross delivered weights at time and place of discharge at Buyers' expense. If the place of destination is outside the port limits, Buyers agree to pay the extra expenses incurred by Sellers or their agents for weighing. No payment shall be made for increase in weight occasioned by water and/or oil during the voyage. If final at time and place of loading, as per GAFTA registered superintendents' certificate at Sellers' choice and expense, (in which case the Deficiency Clause will not apply).

16. **DEFICIENCY-** any deficiency in the bill of lading weight shall be paid for by Sellers and any excess over bill of lading weight shall be paid for by Buyers at contract price.

17. **SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS-** the terms and conditions of GAFTA Sampling Rules No.124, are deemed to be incorporated into this contract. Samples shall be taken at the time of discharge on or before removal from the ship or quay, unless the parties agree that quality final at loading applies, in which event samples shall be taken at time and place of loading. The parties shall appoint superintendents, for the purposes of supervision and sampling of the goods, from the GAFTA Register of Superintendents. Unless otherwise agreed, analysts shall be appointed from the GAFTA Register of Analysts.

18. **PROHIBITION-** In case of prohibition of export, blockade or hostilities or in case of any executive or legislative act done by or on behalf of the government of the country of origin or of the territory where the port or ports of shipment named herein is/are situate, restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this contract and to the extent of such total or partial restriction to prevent fulfilment whether by shipment or by any other means whatsoever and to that extent this contract or any unfulfilled portion thereof shall be cancelled. Sellers shall advise Buyers without delay with the reasons therefor and, if required, Sellers must produce proof to justify the cancellation.

19. **LOADING STRIKE-**

(a) Should shipment of the goods or any part thereof be prevented at any time during the last 28 days of guaranteed time of shipment or at any time during guaranteed contract period if such be less than 28 days, by reason of riots, strikes or lock-outs at port(s) of loading or elsewhere preventing the forwarding of the goods to such port or ports, then the Shipper shall be entitled at the termination of such riots, strikes or lock-outs to as much time, not exceeding 28 days, for shipment from such port or ports as was left for shipment under the contract prior to the outbreak of the riots, strikes or lock-outs, and in the event of the time left for shipment under the contract being 14 days or less, a minimum extension of 14 days shall be allowed. In the event of further riots, strikes or lock-outs occurring during the time by which the guaranteed time of shipment has been extended by reason of the provisions of the foregoing paragraph, the additional extension shall be limited to the actual duration of such further riots, strikes or lock-outs. In case of non-fulfilment under the above conditions the date of default shall be similarly deferred.

(b). The Shipper shall serve notice naming the ports not later than 3 business days after the last day of guaranteed time of shipment if he intends to claim an extension of time for shipment, such notice shall limit the port(s) for shipment after expiry of contract period to those from which an extension is claimed.

(c). If required by Buyers, Sellers must provide documentary evidence to establish any claim for extension under this clause.

20. **NOTICES-** All notices required to be served on the parties pursuant to this contract shall be communicated rapidly in legible form. Methods of rapid communication for the purposes of this clause are defined and mutually recognised as: - either telex, or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other electronic means, always subject to the proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal appointed pursuant to the Arbitration Clause, that the notice was actually transmitted to the addressee. In case of resales/repurchases all notices shall be served without delay by sellers on their respective buyers or vice versa and any notice received after 1600 hours on a business day shall be deemed to have been received on the business day following. A notice to the Brokers or Agent shall be deemed a notice under this contract.

21. **NON-BUSINESS DAYS-** Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any days, which GAFTA may declare as non-business days for specific purposes, shall be non-business days. Should the time limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be extended until the first business day thereafter. The period of shipment shall not be affected by this clause.

22. **DEFAULT-** In default of fulfilment of contract by either party, the following provisions shall apply: -

(a) The party other than the defaulter shall, at their discretion have the right, after serving a notice on the defaulter to sell or purchase, as the case may be, against the defaulter, and such sale or purchase shall establish the default price.

(b) If either party be dissatisfied with such default price or if the right at (a) above is not exercised and damages cannot be mutually agreed, then the assessment of damages shall be settled by arbitration.

(c) The damages payable shall be based on, but not limited to, the difference between the contract price and either the default price established under (a) above or upon the actual or estimated value of the goods, on the date of default, established under (b) above.

(d) In no case shall damages include loss of profit on any sub-contracts made by the party defaulted against or others unless the Arbitrator(s) or Board of Appeal, having regard to special circumstances, shall in his/their sole and absolute discretion think fit.

(e) Damages, if any, shall be computed on the quantity appropriated if any but, if no such quantity has been appropriated then on the mean contract quantity, and any option available to either party shall be deemed to have been exercised accordingly in favour of the mean contract quantity.

(f) Default may be declared by Sellers at any time after expiry of the contract period, and the default date shall then be the first business day after the date of Sellers' advice to their Buyers. If default has not already been declared then (notwithstanding the provisions stated in the Appropriation Clause) if notice of appropriation has not been served by the 10th consecutive day after the last day for appropriation laid down in the contract, the Sellers shall be deemed to be in default, and the default date shall then be the first business day thereafter.

23. **INSOLVENCY-** If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or have a Bankruptcy Petition presented against him (any of which acts being hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or the Receiver, Administrator, Liquidator or other person representing the party committing the Act of Insolvency) that such notice was thus served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out at the market price ruling on the business day following the serving of the notice. If such notice has not been served, then the other party, on learning of the occurrence of the Act of Insolvency, shall have the option of declaring the contract closed out at either the market price on the first business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market price ruling on the first business day after the date when the Act of Insolvency occurred. In all cases the other party to the contract shall have the option of ascertaining the settlement price on the closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the re-purchase or re-sale price shall be the amount payable or receivable under this contract.

24. **CIRCLE-** Where Sellers re-purchase from their Buyers or from any subsequent Buyer the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same description, from the same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for shipment to the same port(s) of destination during the same period of shipment). Different currencies shall not invalidate the circle.

Subject to the terms of the Prohibition Clause in the contract, if the goods are not appropriated, or, having been appropriated documents are not presented, invoices based on the mean contract quantity shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days after the last day for appropriation, or, should the circle not be ascertained before the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained.

Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by the market price on the first day for contractual shipment and invoices shall be settled between each Buyer and his Seller in the circle by payment of the differences between the market price and the relative contract price in currency of the contract.

All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been ascertained in accordance with this clause same shall be binding on all parties to the circle. As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract. Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between the closing out price and the contract price.

25. **DOMICILE-** This contract shall be deemed to have been made in England and to be performed in England, notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance with the laws of England. Except for the purpose of enforcing any award made in pursuance of the Arbitration Clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief, (save for obtaining security only for the claim or counter-claim), the exercise of the powers of the Court in relation to the arbitration proceedings and any dispute other than a dispute which shall fall within the jurisdiction of arbitrators or board of appeal of the Association pursuant to the Arbitration Clause of this contract. For the purpose of any legal proceedings each party shall be deemed to be ordinarily resident or carrying on business at the offices of The Grain and Feed Trade Association, (GAFTA), England, and any party residing or carrying on business in Scotland shall be held to have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of

proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade Association, together with the posting of a copy of such proceedings to his address outside England, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.

**26. ARBITRATION-**

(a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No 125, in the edition current at the date of this contract, such Rules are incorporated into and form part of this Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the application of such Rules.

(b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first have been heard and determined by the arbitrator(s) or a board of appeal, as the case may be, in accordance with the Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or board of appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any persons claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute or claim.

(c) Nothing contained under this Arbitration Clause shall prevent the parties from seeking to obtain security in respect of their claim or counterclaim via legal proceedings in any jurisdiction, provided such legal proceedings shall be limited to applying for and/or obtaining security for a claim or counterclaim, it being understood and agreed that the substantive merits of any dispute or claim shall be determined solely by arbitration in accordance with the GAFTA Arbitration Rules, No 125.

**27. INTERNATIONAL CONVENTIONS-**

The following shall not apply to this contract: -

(a) The Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967;

(b) The United Nations Convention on Contracts for the International Sale of Goods of 1980; and

(c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980.

(d) Incoterms.

(e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to this contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.

Sellers .....Buyers.....

Printed in England and issued by

**GAFTA**  
**(THE GRAIN AND FEED TRADE ASSOCIATION)**  
 GAFTA HOUSE, 6 CHAPEL PLACE, RIVINGTON ST, LONDON EC2A 3SH



## EXHIBIT 2

REF:NR.85114896

04/07/2007 16:58 FROM

+3902876516 PG:881

4. LOG. 2007/16:49:15

JAKIL SPA

NR. 248

P. 1/3. 82

**Agrimpex Co. Limited**

Regal House, 1136 High Road, London, N20 6RA  
 Telephone: 020 8446 6921 Fax: 020 8446 7116 Telex: 296141 AGRICO G.  
 e-mail: trade@agrimport.co.uk

Contract of Sale No. DFS/56307

Date 3rd July 2007

Buyer

Jakil SPA

Forn Buonaparte, 58

20121 Milano

Italy

Dear Sirs,

We confirm having sold to you on 03/07/2007 the following:-

**COMMODITY:** Sudanese durra fsterita 2005/2006 and/or 2006/2007  
 crop at sellers option cleaned to within maximum 3% admixture,  
 maximum 0.50% Tannin in sound good condition at time and place of  
 shipment.  
 Quality/condition/description all final as per certificate/s issued at time  
 of shipment by SGS or their agents in Sudan.  
 Delivered weight.

**QUANTITY:** One cargo/cargoes 20,000 Mt 10% more or less at sellers option and at  
 contract price.

**SHIPMENT:** August / September 2007 from origin.  
 Sellers option to ship any date during this shipment period provided  
 that B/Ls are dated not earlier than 21 days from the date of the first  
 B/Ls issued against shipment executing contract no.  
 DFS/56207 (yours. 11381) dated 27/6/07.

**PACKING:** In bulk.

**PRICE:** US\$ 230 (Two hundred and thirty US Dollars) per metric ton.  
 C+F Free Out one Italian Adriatic port out of Venice/Ancona/Ravenna  
 at buyers option, where buyers guarantee berth to accommodate vessel  
 upto 31' feet swd. In the event buyers want additional ports, then this  
 will be as per rates stipulated in the Charter Party which shall be for  
 buyers account.  
 Discharge port to be declared at sellers first demand but not later  
 than commencement of loading of vessel.

**PAYMENT:** 100% cash against documents on presentation in Italy with payment  
 latest on arrival of vessel/s at discharge port and prior commencement  
 of discharge by T/T. T/T charges for buyers account.  
 Should documents be presented at buyers bank before 11:00 hrs AM  
 then sellers will be credited with value within 48 hours, otherwise:  
 within 72 hours value.

**AGRIMPEx CO. LIMITED**

(Cont'd...)

Director: P. G. Phillips. K. L. Phillips. Registration number: 01976274

REF.NR.05114896

04/07/2007 16:59 FROM

+3982876516 PG:002

4.UG.2007 16:59-16

JAKIL SPA

NR. 243

P. 2/3-02

**Agrimpex Co. Limited**

Regal House, 1138 High Road, London, N20 0RA  
 Telephone: 020 8446 6921 Fax: 020 8446 7116 Telex: 296142 AGRICCO G.  
 e-mail: trade@agrmpex.co.uk

Contract of Sale No. DFS/56307

Date 3rd July 2007

**PAYMENT  
CONT/D....**

In the event vessel/s arrive prior presentation of shipping documents sellers have the option to either ask buyers to take delivery on first class bank guarantee as required by owners of vessel pending presentation of shipping documents. The relative charges of such bank guarantee for sellers account, or alternatively 100% cash latest on arrival of vessel/s before breaking bulk against presentation of original invoice, insurance certificate and indemnity letter for allowing the discharge of the goods without production of B/Ls.

Such letter of indemnity to be confirmed directly from vessel agents to the buyers. This confirmation to reach buyers before payment is effected and then cargo will be released against presentation of the original letter of indemnity to vessels agents.

**DISCHARGE:**

Buyers to discharge goods at their risk and expenses at the average rate of 5,000 MT basis 4 hatches, in the case of 3 hatches or less discharging rate to be adjusted/reduced pro rata if vessel singledecker/bulkcarrier, or at the rate of 1,500 Mt if vessel tweendecker per weather working day of 24 consecutive hours SSHEX unless used and pro rata. If used only time actually worked to count as laytime.

Time at first disport to start counting as from 08.00 AM hours the next working day after presentation of F.O.R. given during ordinary office hours. WIBON/WIFON/WIPON/WICCON.

Demurrage as per C/P rate for buyers account. Despatch to be half of demurrage.

All other terms and conditions not in conflict with the above as per governing Charter Party.

**OTHER TERMS/  
CONDITIONS:**

- 1) - All export duties and/or taxes and/or levies present and/or future are for sellers account.
- 2) - All import duties and/or taxes and/or levies present and/or future are for buyers account.
- 3) - Buyers have the exclusivity on performing vessel/s at discharge port.
- 4) - Sellers guarantee provision on EUR 1 certificate at discharge port before completion of discharge and a copy of phytosanitary certificate on board vessel.

AGRIPEX CO. LIMITED  
 LONDON

(Cont/d...)



REF.NR.85114896

PA/87/2887 17:00 FROM

+3902876516 PG:003

4. LUG. 2007 16:50:16

JAXIL SPA

VR. 248 P. 3/3-04

## Agrimpex Co. Limited

Regal House, 1134 Edg Road, London, N29 6RA  
Telephone: 020 8446 6921 Fax: 020 8446 7116 Telex: 496143 AGRICO G.  
e-mail: trade@agrimport.co.uk

Contract of Sale No. DPS/56307

Date 3rd July 2007

### OTHER TERMS/ CONDITIONS CONT'D.....:

- 5) - Fumigation certificate
- 6) - Vessel/s to be singledecker/bulkcarrier/tweendecker classed highest Lloyds register or equivalent. Vessel/s over 20 years old is/are acceptable in which case overage premium to be for sellers account as per Official Lloyds London Schedule.
- 7) - In the event that the quantity shown on the EUR 1 certificate is higher than that shown on B/L quantity, buyers to accept same.

All other terms, conditions and rules not in contradiction with the above, as per GAFTA contract 61 including the Arbitration Rule form No: 125 (of which the parties admit that they have knowledge and notice) apply to this contract, the details given shall be taken as having been written into such form in the appropriate place.

The validity of this contract will be unaffected by the non return of the counter confirmation duly signed by buyers.

SELLERS

AGRIMPEX CO LIMITED

BUYERS

JAXIL S.p.A.

Effective 1<sup>st</sup> January 2006

# Gafta No.61

Copyright  
THE GRAIN AND FEED TRADE ASSOCIATION

**CONTRACT FOR MEDITERRANEAN AND MOROCCO  
IN BULK OR BAGS  
CARGOES  
TALE QUALE - CIF TERMS**

\* delete/specify as applicable

Date .....

- 1 **SELLERS** .....
- 2
- 3 **INTERVENING AS BROKERS** .....
- 4
- 5 **BUYERS** .....
- 6 have this day entered into a contract on the following terms and conditions.
- 7
- 8 1. **GOODS**- a cargo of .....  
 9 shipped in bulk and/or bags. If in bags, then the bags to be of suitable strength to withstand ordinary wear and tear to port of  
 10 destination. Such bags to be taken and paid for as goods.  
 11
- 12 2. **QUANTITY**- .....units, 5% more or less.  
 13 Sellers have the option of shipping a further 5% more or less on contract quantity, excess or deficiency over the above 5% to be  
 14 settled at the CIF price on the date of the last bill of lading, and on the quantity thereof; value to be fixed by arbitration, unless  
 15 mutually agreed  
 16
- 17 3. **PRICE AND DESTINATION** - At .....  
 18 \* per tonne of 1000 kilograms }  
 19 } gross weight, cost, insurance and freight to .....  
 20 \* per ton of 1016 kilograms or 2240 lbs. }  
 21
- 22 4. **BROKERAGE**.....per tonne, to be paid by Sellers on the mean contract quantity, goods lost or not  
 23 lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract under the terms of  
 24 the Prohibition Clause. Brokerage shall be due on the day shipping documents are exchanged or, if the goods are not  
 25 appropriated then brokerage shall be due on the 30th consecutive day after the last day for appropriation.  
 26
- 27 5. **QUALITY**-
- 28 \* **Warranted to contain** ..... at time and place of discharge.
- 29
- 30 \* **Natural weight** of ..... kilograms per hectolitre guaranteed at time and place of  
 31 discharge, to be ascertained according to GAFTA Sampling Rules No.124, or other accepted authority, and any allowances  
 32 determined to be allowed for off contract price, in accordance with GAFTA Sampling Rules No. 124.  
 33
- 34 \* **Admixture Barley**- Any admixture of dirt and/or other foreign substance over ..... % to be allowed for by  
 35 Sellers at contract price, but any pulse, seed or grain other than Barley to be reckoned as foreign substances at half their  
 36 quantities.
- 37 \* **Other Grain and Seed**- Any admixture of dirt and/or other foreign substance over ..... % to be allowed for by  
 38 Sellers at contract price. The percentage of admixture to be determined by GAFTA, or its duly appointed Analyst.  
 39
- 40 \* **Official** ..... certificate of inspection, or certification of inspection of..... at time and place of  
 41 loading into the ocean carrying vessel, shall be final as to quality. The Buyers shall not be entitled to reject a tender of a  
 42 higher grade of grain of the same colour and description.
- 43 \* **F.A.Q.** (fair average quality) of the season's shipment at time and place of loading, to be assessed upon the basis of, and by  
 44 comparison with the GAFTA F.A.Q. standard of the month during which the bill of lading is dated. In the event of no F.A.Q.  
 45 Standard being established by the Association, the Arbitrator(s) shall in his/their discretion decide what is the fair average  
 46 quality. An average sample of the delivery shall be taken and sealed jointly at the port of discharge by the representatives of  
 47 the shipper and the representatives of the holders of the bill of lading or shipper's delivery order, and shall be forwarded  
 48 immediately to the Association for the purposes of establishing the F.A.Q. standard. The expenses of such sampling and  
 49 forwarding shall be paid half by the Receiver and half by the Sellers. Place of shipment under this contract shall be

understood as the port or group of ports adopted by the appointed Standards Committee in making the Standard. If the difference between the delivery and the F.A.Q. Standard shall not amount to 0.50% on contract price, no allowance for quality shall be due; otherwise the Buyers shall be entitled to the full difference in value.

\* **Sample**, at time and place of shipment about as per sealed sample marked ..... in possession of; ..... the word "about" when referring to quality shall mean the equivalent of 0.50% on contract price.

Difference in quality shall not entitle Buyers to reject except under the award of arbitrator(s) or board of appeal, as the case may be, referred to in the Arbitration Rules specified in the Arbitration Clause.

**Condition-** Shipment shall be made in good condition. Should the goods arrive out of condition, due regard shall be made for the time of the year in which the shipment took place. The fact of the goods so arriving shall not necessarily be sufficient proof of an improper shipment.

6. **PERIOD OF SHIPMENT-** as per bill(s) of lading dated or to be dated ..... The bill(s) of lading to be dated when the goods are actually on board. Date of the bill(s) of lading shall be accepted as proof of date of shipment in the absence of evidence to the contrary. In any month containing an odd number of days, the middle day shall be accepted as being in both halves of the month.

7. **SALES BY NAMED VESSELS** – For all sales by named vessels, the following shall apply: -

- (a) Position of vessel is mutually agreed between Buyers and Sellers;
- (b) The word "now" to be inserted before the word "classed" in the Ship's Classification Clause;
- (c) Appropriation Clause cancelled if sold "shipped".

8. **SHIP'S CLASSIFICATION** - Shipment from ..... by first class mechanically self-propelled vessel(s) suitable for the carriage of the contract goods, classed in accordance with the Institute Classification Clause of the International Underwriting Association in force at time of shipment, excluding tankers and vessels which are either classified in Lloyd's Register or described in Lloyd's Shipping Index as "Ore/Oil" vessels.

9. **EXTENSION OF SHIPMENT-** The contract period for shipment, if such be 31 days or less, shall be extended by an additional period of not more than 8 days, provided that Sellers serve notice claiming extension not later than the next business day following the last day of the originally stipulated period. The notice need not state the number of additional days claimed. Sellers shall make an allowance to Buyers, to be deducted in the invoice from the contract price, based on the number of days by which the originally stipulated period is exceeded, in accordance with the following scale:-

- 1 to 4 additional days, 0.50%;
- 5 or 6 additional days, 1%;
- 7 or 8 additional days 1.50% of the gross contract price.

If, however, after having served notice to Buyers as above, Sellers fail to make shipment within such 8 days, then the contract shall be deemed to have called for shipment during the originally stipulated period plus 8 days, at contract price less 1.50%, and any settlement for default shall be calculated on that basis. If any allowance becomes due under this clause, the contract price shall be deemed to be the original contract price less the allowance and any other contractual differences shall be settled on the basis of such reduced price.

10. **APPROPRIATION-**

(a) Notice of appropriation shall state the vessel's name, the approximate weight shipped, and the date or the presumed date of the bill of lading.

(b) The notice of appropriation shall within 10 consecutive days, (or if shipped from a Moroccan port 7 consecutive days), from the date of the bill(s) of lading be served by or on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers named in the contract. The Non-Business Days Clause shall not apply.

(c) Notice of appropriation shall, within the period stated in sub-clause (b) be served by or on behalf of subsequent Sellers on their Buyers or on the Selling Agent or Brokers named in the contract, but if notice of appropriation is received by subsequent Sellers on the last day or after the period stated in sub-clause (b) from the date of the bill of lading, their notice of appropriation shall be deemed to be in time if served: -

(1) On the same calendar day, if received not later than 1600 hours on any business day, or

(2) Not later than 1600 hours on the next business day, if received after 1600 hours on a non-business day.

(d) A notice of appropriation served on a Selling Agent or Brokers named in the contract shall be considered an appropriation served on Buyers. A Selling Agent or Brokers receiving a notice of appropriation shall serve like notice of appropriation in accordance with the provisions of this clause. Where the Shipper or subsequent Sellers serves the notice of appropriation on the Selling Agent, such Selling Agent may serve notice of appropriation either direct to the Buyers or to the Brokers.

(e) The bill of lading date stated in the notice of appropriation shall be for information only and shall not be binding, but in fixing the period laid down by this clause for serving notices of appropriation the actual date of the bill of lading shall prevail.

(f) Every notice of appropriation shall be open to correction of any errors occurring in transmission, provided that the sender is not responsible for such errors, and for any previous error in transmission which has been repeated in good faith.

(g) Should the vessel arrive before receipt of the appropriation and any extra expenses is incurred thereby, such expenses shall be borne by Sellers.

(h) When a valid notice of appropriation has been received by Buyers, it shall not be withdrawn except with their consent.

(i) In the event of less than 95 tonnes being tendered by any one vessel Buyers shall be entitled to refund of any proved extra expenses for sampling, analysis and lighterage incurred thereby at port of discharge.



117  
118 **11. PAYMENT-**

- 119 (a) **Payment** ..... % of invoice amount by cash in .....  
120 in exchange for and on presentation of shipping documents.  
121 (b) **Shipping documents** – shall consist of - 1. Invoice. 2. Full set(s) of on board Bill(s) of Lading and/or Ship's Delivery  
122 Order(s) and/or other Delivery Order(s) in negotiable and transferable form. Such other Delivery Order(s) if required by  
123 Buyers, to be countersigned by the Shipowners, their Agents or a recognised bank. 3. Policy (ies) and/or Insurance  
124 Certificate(s) and/or Letter(s) of Insurance in the currency of the contract. The Letter(s) of Insurance to be certified by a  
125 recognised bank if required by Buyers. 4. Other documents as called for under the contract. Buyers agree to accept  
126 documents containing the Chamber of Shipping War Deviation Clause and/or other recognised official War Risk Clause.  
127 (c) In the event of shipping documents not being available when called for by Buyers, or on arrival of the vessel at destination,  
128 Sellers shall provide other documents or an indemnity entitling Buyers to obtain delivery of the goods and payment shall be  
129 made by Buyers in exchange for same, but such payment shall not prejudice Buyers' rights under the contract when shipping  
130 documents are eventually available.  
131 (d) Should Sellers fail to present shipping documents or other documents or an indemnity entitling Buyers to take delivery,  
132 Buyers shall take delivery under an indemnity provided by themselves and shall pay for the other documents when presented.  
133 Any reasonable extra expenses, including the costs of such indemnity or extra charges incurred by reason of the failure of  
134 Sellers to provide such documents, shall be borne by Sellers, but such payment shall not prejudice Buyers' rights under the  
135 contract when shipping documents are eventually available.  
136 (e) Should shipping documents be presented with an incomplete set of bill(s) of lading or should other shipping documents be  
137 missing, payment shall be made provided that delivery of such missing documents is guaranteed, such guarantee to be  
138 countersigned, if required by Buyers, by a recognised bank.  
139 (f) Costs of collection shall be for account of Sellers, but if Buyers demand presentation only through a bank of their choice, in  
140 that event any additional collection costs shall be borne by Buyers.  
141 (g) No obvious clerical error in the documents shall entitle Buyers to reject them or delay payment, but Sellers shall be  
142 responsible for all loss or expense caused to Buyers by reason of such error and Sellers shall on request furnish an approved  
143 guarantee in respect thereto.  
144 (h) Amounts payable under this contract shall be settled without delay. If not so settled, either party may notify the other that a  
145 dispute has arisen and serve a notice stating his intention to refer the dispute to arbitration in accordance with the Arbitration  
146 Rules.  
147 (i) **Interest** – If there has been unreasonable delay in any payment, interest appropriate to the currency involved shall be  
148 charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which shall be settled by arbitration.  
149 Otherwise interest shall be payable only where specifically provided in the terms of the contract or by an award of arbitration.  
150 The terms of this clause do not override the parties' contractual obligation under sub-clause (a).  
151

152 **12. INSURANCE-** Sellers shall provide insurance on terms not less favourable than those set out hereunder, and as set out in detail in  
153 GAFTA Insurance Terms No.72 viz:-

154 (a) **Risks Covered:** -

- |  |                        |
|--|------------------------|
| 155 Cargo Clauses (WA) with average payable, with 3% franchise or better terms | - Section 2 of Form 72 |
| 156 War Clauses (Cargo)  | - Section 4 of Form 72 |
| 157 Strikes, Riots and Civil Commotions Clauses (Cargo)                        | - Section 5 of Form 72 |

158 (b) **Insurers** - The insurance to be effected with first class underwriters and/or companies who are domiciled or carrying on  
159 business in the United Kingdom or who, for the purpose of any legal proceedings, accept a British domicile and provide an address  
160 for service of process in London, but for whose solvency Sellers shall not be responsible.

161 (c) **Insurable Value** - Insured amount to be for not less than 2% over the invoice amount, including freight when freight is payable  
162 on shipment or due in any event, ship and/or cargo lost or not lost, and including the amount of any War Risk premium payable by  
163 Buyers.

164 (d) **Freight Contingency** - When freight is payable on arrival or on right and true delivery of the goods and the insurance does not  
165 include the freight, Sellers shall effect insurance upon similar terms, such insurance to attach only as such freight becomes  
166 payable, for the amount of the freight plus 2%, until the termination of the risk as provided in the above mentioned clauses, and  
167 shall undertake that their policies are so worded that in the case of a particular or general average claim the Buyers shall be put in  
168 the same position as if the C.I.F. value plus 2% were insured from the time of shipment.

169 (e) **Certificates/Policies** - Sellers shall give all policies and/or certificates and/or letters of insurance provided for in this contract,  
170 (duly stamped if applicable) for original and increased value (if any) for the value stipulated in (c) above. In the event of a  
171 certificate of insurance being supplied, it is agreed that such certificate shall be exchanged by Sellers for a policy if and when  
172 required and such certificate shall state on its face that it is so exchangeable. If required by Buyers, letter(s) of insurance shall be  
173 guaranteed by a recognised bank, or by any other guarantor who is acceptable to Buyers.

174 (f) **Total Loss** - In the event of total or constructive total loss, or where the amount of the insurance becomes payable in full, the  
175 insured amount in excess of 2% over the invoice amount shall be for Sellers' account and the party in possession of the policy (ies)  
176 shall collect the amount of insurance and shall thereupon settle with the other party on that basis.

177 (g) **Currency of Claims** - Claims to be paid in the currency of the contract.

178 (h) **War and Strike Risks Premiums** – Any premium in excess of 0.50% to be for account of Buyers. The rate of such insurance  
179 not to exceed the rate ruling in London at time of shipment or date of vessel's sailing whichever may be adopted by underwriters.  
180 Such excess premium shall be claimed from Buyers, wherever possible, with the Provisional Invoice, but in no case later than the  
181 date of vessel's arrival, or not later than 7 consecutive days after the rate has been agreed with underwriters, whichever may be the  
182 later, otherwise such claim shall be void unless, in the opinion of Arbitrators, the delay is justifiable. Sellers' obligation to provide  
183 War Risk Insurance shall be limited to the terms and conditions in force and generally obtainable in London at time of shipment.

- 184 (i) Where Sellers are responsible for allowances or other payments to Buyers under Rye Terms or other contractual terms, (and  
185 which risks are also covered by the insurance provided by Sellers), the Buyers, on receipt of settlement, shall immediately return to  
186 Sellers the insurance documents originally received from them and shall, if required, subrogate to Sellers all right of claim against  
187 the Insurers in respect of such matters.  
188
- 189 **13. DUTIES, TAXES, LEVIES, ETC.** – All export duties, taxes, levies, etc., present or future, in country of origin, shall be for  
190 Sellers' account. All import duties, taxes, levies, etc., present or future, in country of destination, shall be for Buyers' account.  
191
- 192 **14. DISCHARGE-** Ship to discharge according to the custom of the port. Ship to discharge at the rate of .....  
193  
194 If documents are tendered which do not provide for discharge as above, or contain contrary stipulations, Sellers to be responsible  
195 to Buyers for all extra expenses incurred thereby.  
196
- 197 **15. WEIGHING-** the terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this contract.  
198 Unless otherwise agreed, final settlement shall be made on the basis of gross delivered weights at time and place of discharge  
199 at Buyers' expense. If the place of destination is outside the port limits, Buyers agree to pay the extra expenses incurred by  
200 Sellers or their agents for weighing. No payment shall be made for increase in weight occasioned by water and/or oil during  
201 the voyage. If final at time and place of loading, as per GAFTA registered superintendents' certificate at Sellers' choice and  
202 expense, (in which case the Deficiency Clause will not apply).  
203
- 204 **16. DEFICIENCY-** any deficiency in the bill of lading weight shall be paid for by Sellers and any excess over bill of lading  
205 weight shall be paid for by Buyers at contract price.  
206
- 207 **17. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS-** the terms and conditions of GAFTA Sampling Rules  
208 No.124, are deemed to be incorporated into this contract. Samples shall be taken at the time of discharge on or before removal  
209 from the ship or quay, unless the parties agree that quality final at loading applies, in which event samples shall be taken at  
210 time and place of loading. The parties shall appoint superintendents, for the purposes of supervision and sampling of the  
211 goods, from the GAFTA Register of Superintendents. Unless otherwise agreed, analysts shall be appointed from the GAFTA  
212 Register of Analysts.  
213
- 214 **18. PROHIBITION-** In case of prohibition of export, blockade or hostilities or in case of any executive or legislative act done by or  
215 on behalf of the government of the country of origin or of the territory where the port or ports of shipment named herein is/are  
216 situate, restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this  
217 contract and to the extent of such total or partial restriction to prevent fulfilment whether by shipment or by any other means  
218 whatsoever and to that extent this contract or any unfulfilled portion thereof shall be cancelled. Sellers shall advise Buyers without  
219 delay with the reasons therefor and, if required, Sellers must produce proof to justify the cancellation.  
220
- 221 **19. LOADING STRIKE-**  
222 (a) Should shipment of the goods or any part thereof be prevented at any time during the last 28 days of guaranteed time of  
223 shipment or at any time during guaranteed contract period if such be less than 28 days, by reason of riots, strikes or lock-outs at  
224 port(s) of loading or elsewhere preventing the forwarding of the goods to such port or ports, then the Shipper shall be entitled at  
225 the termination of such riots, strikes or lock-outs to as much time, not exceeding 28 days, for shipment from such port or ports as  
226 was left for shipment under the contract prior to the outbreak of the riots, strikes or lock-outs, and in the event of the time left for  
227 shipment under the contract being 14 days or less, a minimum extension of 14 days shall be allowed. In the event of further riots,  
228 strikes or lock-outs occurring during the time by which the guaranteed time of shipment has been extended by reason of the  
229 provisions of the foregoing paragraph, the additional extension shall be limited to the actual duration of such further riots, strikes  
230 or lock-outs. In case of non-fulfilment under the above conditions the date of default shall be similarly deferred.  
231 (b). The Shipper shall serve notice naming the ports not later than 3 business days after the last day of guaranteed time of shipment  
232 if he intends to claim an extension of time for shipment, such notice shall limit the port(s) for shipment after expiry of contract  
233 period to those from which an extension is claimed.  
234 (c). If required by Buyers, Sellers must provide documentary evidence to establish any claim for extension under this clause.  
235
- 236 **20. NOTICES-** All notices required to be served on the parties pursuant to this contract shall be communicated rapidly in legible  
237 form. Methods of rapid communication for the purposes of this clause are defined and mutually recognised as: - either telex,  
238 or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other electronic means, always subject to the  
239 proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the  
240 case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal appointed pursuant to the Arbitration  
241 Clause, that the notice was actually transmitted to the addressee. In case of resales/repurchases all notices shall be served  
242 without delay by sellers on their respective buyers or vice versa and any notice received after 1600 hours on a business day  
243 shall be deemed to have been received on the business day following. A notice to the Brokers or Agent shall be deemed a  
244 notice under this contract.  
245
- 246 **21. NON-BUSINESS DAYS-** Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and  
247 any days, which GAFTA may declare as non-business days for specific purposes, shall be non-business days. Should the time  
248 limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be extended until the first  
249 business day thereafter. The period of shipment shall not be affected by this clause.  
250
- 251 **22. DEFAULT-** In default of fulfilment of contract by either party, the following provisions shall apply: -



(a) The party other than the defaulter shall, at their discretion have the right, after serving a notice on the defaulter to sell or purchase, as the case may be, against the defaulter, and such sale or purchase shall establish the default price.

(b) If either party be dissatisfied with such default price or if the right at (a) above is not exercised and damages cannot be mutually agreed, then the assessment of damages shall be settled by arbitration.

(c) The damages payable shall be based on, but not limited to, the difference between the contract price and either the default price established under (a) above or upon the actual or estimated value of the goods, on the date of default, established under (b) above.

(d) In no case shall damages include loss of profit on any sub-contracts made by the party defaulted against or others unless the Arbitrator(s) or Board of Appeal, having regard to special circumstances, shall in his/their sole and absolute discretion think fit.

(e) Damages, if any, shall be computed on the quantity appropriated if any but, if no such quantity has been appropriated then on the mean contract quantity, and any option available to either party shall be deemed to have been exercised accordingly in favour of the mean contract quantity.

(f) Default may be declared by Sellers at any time after expiry of the contract period, and the default date shall then be the first business day after the date of Sellers' advice to their Buyers. If default has not already been declared then (notwithstanding the provisions stated in the Appropriation Clause) if notice of appropriation has not been served by the 10th consecutive day after the last day for appropriation laid down in the contract, the Sellers shall be deemed to be in default, and the default date shall then be the first business day thereafter.

23. **INSOLVENCY-** If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or have a Bankruptcy Petition presented against him (any of which acts being hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or the Receiver, Administrator, Liquidator or other person representing the party committing the Act of Insolvency) that such notice was thus served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out at the market price ruling on the business day following the serving of the notice. If such notice has not been served, then the other party, on learning of the occurrence of the Act of Insolvency, shall have the option of declaring the contract closed out at either the market price on the first business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market price ruling on the first business day after the date when the Act of Insolvency occurred. In all cases the other party to the contract shall have the option of ascertaining the settlement price on the closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the re-purchase or re-sale price shall be the amount payable or receivable under this contract.

24. **CIRCLE-** Where Sellers re-purchase from their Buyers or from any subsequent Buyer the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same description, from the same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for shipment to the same port(s) of destination during the same period of shipment). Different currencies shall not invalidate the circle. Subject to the terms of the Prohibition Clause in the contract, if the goods are not appropriated, or, having been appropriated documents are not presented, invoices based on the mean contract quantity shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days after the last day for appropriation, or, should the circle not be ascertained before the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained. Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by the market price on the first day for contractual shipment and invoices shall be settled between each Buyer and his Seller in the circle by payment of the differences between the market price and the relative contract price in currency of the contract. All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been ascertained in accordance with this clause same shall be binding on all parties to the circle. As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract. Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between the closing out price and the contract price.

25. **DOMICILE-** This contract shall be deemed to have been made in England and to be performed in England, notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance with the laws of England. Except for the purpose of enforcing any award made in pursuance of the Arbitration Clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief, (save for obtaining security only for the claim or counter-claim), the exercise of the powers of the Court in relation to the arbitration proceedings and any dispute other than a dispute which shall fall within the jurisdiction of arbitrators or board of appeal of the Association pursuant to the Arbitration Clause of this contract. For the purpose of any legal proceedings each party shall be deemed to be ordinarily resident or carrying on business at the offices of The Grain and Feed Trade Association, (GAFTA), England, and any party residing or carrying on business in Scotland shall be held to have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of

proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade Association, together with the posting of a copy of such proceedings to his address outside England, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.

**26. ARBITRATION-**

(a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No 125, in the edition current at the date of this contract, such Rules are incorporated into and form part of this Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the application of such Rules.

(b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first have been heard and determined by the arbitrator(s) or a board of appeal, as the case may be, in accordance with the Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or board of appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any persons claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute or claim.

(c) Nothing contained under this Arbitration Clause shall prevent the parties from seeking to obtain security in respect of their claim or counterclaim via legal proceedings in any jurisdiction, provided such legal proceedings shall be limited to applying for and/or obtaining security for a claim or counterclaim, it being understood and agreed that the substantive merits of any dispute or claim shall be determined solely by arbitration in accordance with the GAFTA Arbitration Rules, No 125.

**27. INTERNATIONAL CONVENTIONS-**

The following shall not apply to this contract: -

(a) The Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967;

(b) The United Nations Convention on Contracts for the International Sale of Goods of 1980; and

(c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980.

(d) Incoterms.

(e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to this contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.

Sellers .....Buyers.....

Printed in England and issued by

**GAFTA**  
**(THE GRAIN AND FEED TRADE ASSOCIATION)**  
 GAFTA HOUSE, 6 CHAPEL PLACE, RIVINGTON ST, LONDON EC2A 3SH

## EXHIBIT 3

16. LUG. 2007 10:11

JAKIL SPA

NR. 107 P. 1

## Agrimex Co. Limited

Regal House, 1138 High Road, London, N20 0RA  
Telephone: 020 8446 6921 Fax: 020 8446 7116 Telex: 206142 AGRICO G.  
e-mail: trade@agrimex.co.uk

Contract of Sale No. DFS/56407

Date 10th July 2007

Buyer

Jakil SPA

Foro Buonaparte, 68

20121 Milano

Italy

Dear Sirs,

We confirm having sold to you on 10/07/2007 the following:-

COMMODITY: Sudanese durra feterita 2005/2006 and/or 2006/2007  
crop at sellers option cleaned to within maximum 3% admixture,  
maximum 0.50% Tamin in sound good condition at time and place of  
shipment.  
Quality/condition/description all final as per certificate/s issued at time  
of shipment by SGS or their agents in Sudan.  
Delivered weight.

QUANTITY/ One cargo/cargoes 20,000 Mt 10% more or less at sellers option and at  
contract price.

SHIPMENT: September/October 2007 from origin.

PACKING: In bulk.

PRICE: US\$ 235 (Two hundred and thirty-five US Dollars) per mton.  
C+F Free Out one Italian Adriatic port out of Venice/Ancona/Ravenna  
at buyers option, where buyers guarantee berth to accommodate vessel  
upto 31' feet swad. In the event buyers want additional ports, then this  
will be as per rates stipulated in the Charter Party which shall be for  
buyers account.  
Discharge port to be declared at sellers first demand but not later  
than commencement of loading of vessel.

PAYMENT: 100% cash against documents on presentation in Italy with payment  
latest on arrival of vessel/s at discharge port and prior commencement  
of discharge by T/T. T/T charges for buyers account.  
Should documents be presented at buyers bank before 11:00 hrs AM  
then sellers will be credited with value within 48 hours, otherwise  
within 72 hours value.

(Cont'd...)

**AGRIMEX CO LIMITED**

Page 1

Director: P. G. Philipper. X. L. Philipex Registration number: 01370674



16. JUL 2007 10:12

JAXIE SPA

NR. 107 P. 2

**Agrimpex Co. Limited**

Royal House, 1139 High Road, London, N20 0RA  
 Telephone: 020 8446 6921 Fax: 020 8446 7116 Telex: 296142 AGRICO G.  
 e-mail: trade@agrimper.co.uk

Contract of Sale No. DFS/56407

Date 16th July 2007

**PAYMENT  
CONT'D....:**

In the event vessel/s arrive prior presentation of shipping documents sellers have the option to either ask buyers to take delivery on first class bank guarantee as required by owners of vessel pending presentation of shipping documents. The relative charges of such bank guarantee for sellers account, or alternatively 100% cash latest on arrival of vessel/s before breaking bulk against presentation of original invoice, insurance certificate and indemnity letter for allowing the discharge of the goods without production of B/Ls.

Such letter of indemnity to be confirmed directly from vessel agents to the buyers. This confirmation to reach buyers before payment is effected and then cargo will be released against presentation of the original letter of indemnity to vessels agents.

**DISCHARGE:**

Buyers to discharge goods at their risk and expenses at the average rate of 5,000 MT basis 4 hatches, in the case of 3 hatches or less discharging rate to be adjusted/reduced prorata if vessel singledecker/bulkcarrier, or at the rate of 1,500 Mt if vessel tweendecker per weather working day of 24 consecutive hours SSHEX unless used and prorata. If used only time actually worked to count as laytime.

Time at first disport to start counting as from 08.00 AM hours the next working day after presentation of N.O.R. given during ordinary office hours. WIBON/WIPON/WITPON/WICCON.

Demurrage as per C/P rate for buyers account. Despatch to be half of demurrage.

All other terms and conditions not in conflict with the above as per governing Charter Party.

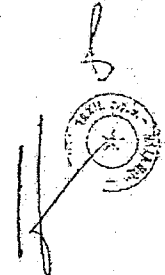
**OTHER TERMS/  
CONDITIONS:**

- 1) - All export duties and/or taxes and/or levies present and/or future are for sellers account.
- 2) - All import duties and/or taxes and/or levies present and/or future are for buyers account.
- 3) - Buyers have the exclusivity on performing vessel/s at discharge port.
- 4) - Sellers guarantee provision on EUR 1 certificate at discharge port before completion of discharge and a copy of phytosanitary certificate on board vessel.

**AGRIMPER CO LIMITED**

Page 2

Director: P. C. Philippot, K. L. Philippot, Registration number: 01070976



16. LUG. 2007 10:12

JAKUL SPA

NR. 107 P. 3

## Agrimpex Co. Limited

Regal House, 1139 High Road, London, N20 0RA  
Telephone: 020 8446 6921 Fax: 020 8446 7116 Telex: 296142 AGRICO G.  
e-mail: trade@agrmpex.co.uk

(Cont/d...)

Contract of Sale No. DFS/56407

Date 10th July 2007

### OTHER TERMS/ CONDITIONS CONT/D.....

- 5) - Fumigation certificate
- 6) - Vessel/s to be single decker/bulk carrier/tweendecker classed highest Lloyds register or equivalent. Vessel/s over 20 years old is/are acceptable in which case overage premium to be for sellers account as per Official Lloyds London Schedule.
- 7) - In the event that the quantity shown on the EUR 1 certificate is higher than that shown on B/L quantity, buyers to accept same.

All other terms, conditions and rules not in contradiction with the above, as per GAFTA contract 61 including the Arbitration Rule form No. 125 (of which the parties admit that they have knowledge and notice) apply to this contract, the details given shall be taken as having been written into such form in the appropriate place.

The validity of this contract will be unaffected by the non return of the counter confirmation duly signed by buyers.

SELLERS

AGRIPEX CO LIMITED

BUYERS

JAKUL S.P.A.

Effective 1<sup>st</sup> January 2006

# Gafta No.61

Copyright  
THE GRAIN AND FEED TRADE ASSOCIATION

**CONTRACT FOR MEDITERRANEAN AND MOROCCO  
IN BULK OR BAGS  
CARGOES  
TALE QUALE - CIF TERMS**

\* delete/specify as applicable

Date .....

1 **SELLERS** .....2  
3 **INTERVENING AS BROKERS** .....4  
5 **BUYERS** .....

6 have this day entered into a contract on the following terms and conditions.

7  
8 1. **GOODS-** a cargo of .....  
9 shipped in bulk and/or bags. If in bags, then the bags to be of suitable strength to withstand ordinary wear and tear to port of  
10 destination. Such bags to be taken and paid for as goods.

11  
12 2. **QUANTITY-** .....units, 5% more or less.  
13 Sellers have the option of shipping a further 5% more or less on contract quantity, excess or deficiency over the above 5% to be  
14 settled at the CIF price on the date of the last bill of lading, and on the quantity thereof; value to be fixed by arbitration, unless  
15 mutually agreed

16  
17 3. **PRICE AND DESTINATION - At** .....  
18 \* per tonne of 1000 kilograms }  
19 } gross weight, cost, insurance and freight to .....  
20 \* per ton of 1016 kilograms or 2240 lbs. }

21  
22 4. **BROKERAGE**.....per tonne, to be paid by Sellers on the mean contract quantity, goods lost or not  
23 lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract under the terms of  
24 the Prohibition Clause. Brokerage shall be due on the day shipping documents are exchanged or, if the goods are not  
25 appropriated then brokerage shall be due on the 30th consecutive day after the last day for appropriation.

26  
27 5. **QUALITY-**  
28 \* **Warranted to contain** ..... at time and place of discharge.

29  
30 \* **Natural weight of** ..... kilograms per hectolitre guaranteed at time and place of  
31 discharge, to be ascertained according to GAFTA Sampling Rules No.124, or other accepted authority, and any allowances  
32 determined to be allowed for off contract price, in accordance with GAFTA Sampling Rules No. 124.

33  
34 \* **Admixture Barley-** Any admixture of dirt and/or other foreign substance over ..... % to be allowed for by  
35 Sellers at contract price, but any pulse, seed or grain other than Barley to be reckoned as foreign substances at half their  
36 quantities.

37 \* **Other Grain and Seed-** Any admixture of dirt and/or other foreign substance over ..... % to be allowed for by  
38 Sellers at contract price. The percentage of admixture to be determined by GAFTA, or its duly appointed Analyst.

39  
40 \* **Official** ..... certificate of inspection, or certification of inspection of..... at time and place of  
41 loading into the ocean carrying vessel, shall be final as to quality. The Buyers shall not be entitled to reject a tender of a  
42 higher grade of grain of the same colour and description.

43 \* **F.A.Q.** (fair average quality) of the season's shipment at time and place of loading, to be assessed upon the basis of, and by  
44 comparison with the GAFTA F.A.Q. standard of the month during which the bill of lading is dated. In the event of no F.A.Q.  
45 Standard being established by the Association, the Arbitrator(s) shall in his/their discretion decide what is the fair average  
46 quality. An average sample of the delivery shall be taken and sealed jointly at the port of discharge by the representatives of  
47 the shipper and the representatives of the holders of the bill of lading or shipper's delivery order, and shall be forwarded  
48 immediately to the Association for the purposes of establishing the F.A.Q. standard. The expenses of such sampling and  
49 forwarding shall be paid half by the Receiver and half by the Sellers. Place of shipment under this contract shall be



understood as the port or group of ports adopted by the appointed Standards Committee in making the Standard. If the difference between the delivery and the F.A.Q. Standard shall not amount to 0.50% on contract price, no allowance for quality shall be due; otherwise the Buyers shall be entitled to the full difference in value.

- \* **Sample**, at time and place of shipment about as per sealed sample marked..... in possession of;..... the word "about" when referring to quality shall mean the equivalent of 0.50% on contract price.

Difference in quality shall not entitle Buyers to reject except under the award of arbitrator(s) or board of appeal, as the case may be, referred to in the Arbitration Rules specified in the Arbitration Clause.

**Condition-** Shipment shall be made in good condition. Should the goods arrive out of condition, due regard shall be made for the time of the year in which the shipment took place. The fact of the goods so arriving shall not necessarily be sufficient proof of an improper shipment.

6. **PERIOD OF SHIPMENT-** as per bill(s) of lading dated or to be dated ..... The bill(s) of lading to be dated when the goods are actually on board. Date of the bill(s) of lading shall be accepted as proof of date of shipment in the absence of evidence to the contrary. In any month containing an odd number of days, the middle day shall be accepted as being in both halves of the month.

7. **SALES BY NAMED VESSELS** – For all sales by named vessels, the following shall apply: -  
 (a) Position of vessel is mutually agreed between Buyers and Sellers;  
 (b) The word "now" to be inserted before the word "classed" in the Ship's Classification Clause;  
 (c) Appropriation Clause cancelled if sold "shipped".

8. **SHIP'S CLASSIFICATION** - Shipment from ..... by first class mechanically self-propelled vessel(s) suitable for the carriage of the contract goods, classed in accordance with the Institute Classification Clause of the International Underwriting Association in force at time of shipment, excluding tankers and vessels which are either classified in Lloyd's Register or described in Lloyd's Shipping Index as "Ore/Oil" vessels.

9. **EXTENSION OF SHIPMENT-** The contract period for shipment, if such be 31 days or less, shall be extended by an additional period of not more than 8 days, provided that Sellers serve notice claiming extension not later than the next business day following the last day of the originally stipulated period. The notice need not state the number of additional days claimed. Sellers shall make an allowance to Buyers, to be deducted in the invoice from the contract price, based on the number of days by which the originally stipulated period is exceeded, in accordance with the following scale:-

- 1 to 4 additional days, 0.50%;  
 5 or 6 additional days, 1%;  
 7 or 8 additional days 1.50% of the gross contract price.

If, however, after having served notice to Buyers as above, Sellers fail to make shipment within such 8 days, then the contract shall be deemed to have called for shipment during the originally stipulated period plus 8 days, at contract price less 1.50%, and any settlement for default shall be calculated on that basis. If any allowance becomes due under this clause, the contract price shall be deemed to be the original contract price less the allowance and any other contractual differences shall be settled on the basis of such reduced price.

10. **APPROPRIATION-**

(a) Notice of appropriation shall state the vessel's name, the approximate weight shipped, and the date or the presumed date of the bill of lading.

(b) The notice of appropriation shall within 10 consecutive days, (or if shipped from a Moroccan port 7 consecutive days), from the date of the bill(s) of lading be served by or on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers named in the contract. The Non-Business Days Clause shall not apply.

(c) Notice of appropriation shall, within the period stated in sub-clause (b) be served by or on behalf of subsequent Sellers on their Buyers or on the Selling Agent or Brokers named in the contract, but if notice of appropriation is received by subsequent Sellers on the last day or after the period stated in sub-clause (b) from the date of the bill of lading, their notice of appropriation shall be deemed to be in time if served: -

(1) On the same calendar day, if received not later than 1600 hours on any business day, or

(2) Not later than 1600 hours on the next business day, if received after 1600 hours on a non-business day.

(d) A notice of appropriation served on a Selling Agent or Brokers named in the contract shall be considered an appropriation served on Buyers. A Selling Agent or Brokers receiving a notice of appropriation shall serve like notice of appropriation in accordance with the provisions of this clause. Where the Shipper or subsequent Sellers serves the notice of appropriation on the Selling Agent, such Selling Agent may serve notice of appropriation either direct to the Buyers or to the Brokers.

(e) The bill of lading date stated in the notice of appropriation shall be for information only and shall not be binding, but in fixing the period laid down by this clause for serving notices of appropriation the actual date of the bill of lading shall prevail.

(f) Every notice of appropriation shall be open to correction of any errors occurring in transmission, provided that the sender is not responsible for such errors, and for any previous error in transmission which has been repeated in good faith.

(g) Should the vessel arrive before receipt of the appropriation and any extra expenses is incurred thereby, such expenses shall be borne by Sellers.

(h) When a valid notice of appropriation has been received by Buyers, it shall not be withdrawn except with their consent.

(i) In the event of less than 95 tonnes being tendered by any one vessel Buyers shall be entitled to refund of any proved extra expenses for sampling, analysis and lighterage incurred thereby at port of discharge.



## 11. PAYMENT-

- (a) **Payment** ..... % of invoice amount by cash in ..... in exchange for and on presentation of shipping documents.
- (b) **Shipping documents** – shall consist of - 1. Invoice. 2. Full set(s) of on board Bill(s) of Lading and/or Ship's Delivery Order(s) and/or other Delivery Order(s) in negotiable and transferable form. Such other Delivery Order(s) if required by Buyers, to be countersigned by the Shipowners, their Agents or a recognised bank. 3. Policy (ies) and/or Insurance Certificate(s) and/or Letter(s) of Insurance in the currency of the contract. The Letter(s) of Insurance to be certified by a recognised bank if required by Buyers. 4. Other documents as called for under the contract. Buyers agree to accept documents containing the Chamber of Shipping War Deviation Clause and/or other recognised official War Risk Clause.
- (c) In the event of shipping documents not being available when called for by Buyers, or on arrival of the vessel at destination, Sellers shall provide other documents or an indemnity entitling Buyers to obtain delivery of the goods and payment shall be made by Buyers in exchange for same, but such payment shall not prejudice Buyers' rights under the contract when shipping documents are eventually available.
- (d) Should Sellers fail to present shipping documents or other documents or an indemnity entitling Buyers to take delivery, Buyers shall take delivery under an indemnity provided by themselves and shall pay for the other documents when presented. Any reasonable extra expenses, including the costs of such indemnity or extra charges incurred by reason of the failure of Sellers to provide such documents, shall be borne by Sellers, but such payment shall not prejudice Buyers' rights under the contract when shipping documents are eventually available.
- (e) Should shipping documents be presented with an incomplete set of bill(s) of lading or should other shipping documents be missing, payment shall be made provided that delivery of such missing documents is guaranteed, such guarantee to be countersigned, if required by Buyers, by a recognised bank.
- (f) Costs of collection shall be for account of Sellers, but if Buyers demand presentation only through a bank of their choice, in that event any additional collection costs shall be borne by Buyers.
- (g) No obvious clerical error in the documents shall entitle Buyers to reject them or delay payment, but Sellers shall be responsible for all loss or expense caused to Buyers by reason of such error and Sellers shall on request furnish an approved guarantee in respect thereto.
- (h) Amounts payable under this contract shall be settled without delay. If not so settled, either party may notify the other that a dispute has arisen and serve a notice stating his intention to refer the dispute to arbitration in accordance with the Arbitration Rules.
- (i) **Interest** – If there has been unreasonable delay in any payment, interest appropriate to the currency involved shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which shall be settled by arbitration. Otherwise interest shall be payable only where specifically provided in the terms of the contract or by an award of arbitration. The terms of this clause do not override the parties' contractual obligation under sub-clause (a).

12. **INSURANCE**- Sellers shall provide insurance on terms not less favourable than those set out hereunder, and as set out in detail in GAFTA Insurance Terms No.72 viz:-

## (a) Risks Covered: -

- |  |                        |
|--|------------------------|
| Cargo Clauses (WA) with average payable, with 3% franchise or better terms | - Section 2 of Form 72 |
| War Clauses (Cargo)  | - Section 4 of Form 72 |
| Strikes, Riots and Civil Commotions Clauses (Cargo)                        | - Section 5 of Form 72 |

(b) **Insurers** - The insurance to be effected with first class underwriters and/or companies who are domiciled or carrying on business in the United Kingdom or who, for the purpose of any legal proceedings, accept a British domicile and provide an address for service of process in London, but for whose solvency Sellers shall not be responsible.

(c) **Insurable Value** - Insured amount to be for not less than 2% over the invoice amount, including freight when freight is payable on shipment or due in any event, ship and/or cargo lost or not lost, and including the amount of any War Risk premium payable by Buyers.

(d) **Freight Contingency** - When freight is payable on arrival or on right and true delivery of the goods and the insurance does not include the freight, Sellers shall effect insurance upon similar terms, such insurance to attach only as such freight becomes payable, for the amount of the freight plus 2%, until the termination of the risk as provided in the above mentioned clauses, and shall undertake that their policies are so worded that in the case of a particular or general average claim the Buyers shall be put in the same position as if the C.I.F. value plus 2% were insured from the time of shipment.

(e) **Certificates/Policies** - Sellers shall give all policies and/or certificates and/or letters of insurance provided for in this contract, (duly stamped if applicable) for original and increased value (if any) for the value stipulated in (c) above. In the event of a certificate of insurance being supplied, it is agreed that such certificate shall be exchanged by Sellers for a policy if and when required and such certificate shall state on its face that it is so exchangeable. If required by Buyers, letter(s) of insurance shall be guaranteed by a recognised bank, or by any other guarantor who is acceptable to Buyers.

(f) **Total Loss** - In the event of total or constructive total loss, or where the amount of the insurance becomes payable in full, the insured amount in excess of 2% over the invoice amount shall be for Sellers' account and the party in possession of the policy (ies) shall collect the amount of insurance and shall thereupon settle with the other party on that basis.

(g) **Currency of Claims** - Claims to be paid in the currency of the contract.

(h) **War and Strike Risks Premiums** – Any premium in excess of 0.50% to be for account of Buyers. The rate of such insurance not to exceed the rate ruling in London at time of shipment or date of vessel's sailing whichever may be adopted by underwriters. Such excess premium shall be claimed from Buyers, wherever possible, with the Provisional Invoice, but in no case later than the date of vessel's arrival, or not later than 7 consecutive days after the rate has been agreed with underwriters, whichever may be the later, otherwise such claim shall be void unless, in the opinion of Arbitrators, the delay is justifiable. Sellers' obligation to provide War Risk Insurance shall be limited to the terms and conditions in force and generally obtainable in London at time of shipment.

184 (i) Where Sellers are responsible for allowances or other payments to Buyers under Rye Terms or other contractual terms, (and  
 185 which risks are also covered by the insurance provided by Sellers), the Buyers, on receipt of settlement, shall immediately return to  
 186 Sellers the insurance documents originally received from them and shall, if required, subrogate to Sellers all right of claim against  
 187 the Insurers in respect of such matters.  
 188

189 **13. DUTIES, TAXES, LEVIES, ETC.** – All export duties, taxes, levies, etc., present or future, in country of origin, shall be for  
 190 Sellers' account. All import duties, taxes, levies, etc., present or future, in country of destination, shall be for Buyers' account.  
 191

192 **14. DISCHARGE-** Ship to discharge according to the custom of the port. Ship to discharge at the rate of .....  
 193  
 194 If documents are tendered which do not provide for discharge as above, or contain contrary stipulations, Sellers to be responsible  
 195 to Buyers for all extra expenses incurred thereby.  
 196

197 **15. WEIGHING-** the terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this contract.  
 198 Unless otherwise agreed, final settlement shall be made on the basis of gross delivered weights at time and place of discharge  
 199 at Buyers' expense. If the place of destination is outside the port limits, Buyers agree to pay the extra expenses incurred by  
 200 Sellers or their agents for weighing. No payment shall be made for increase in weight occasioned by water and/or oil during  
 201 the voyage. If final at time and place of loading, as per GAFTA registered superintendents' certificate at Sellers' choice and  
 202 expense, (in which case the Deficiency Clause will not apply).  
 203

204 **16. DEFICIENCY-** any deficiency in the bill of lading weight shall be paid for by Sellers and any excess over bill of lading  
 205 weight shall be paid for by Buyers at contract price.  
 206

207 **17. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS-** the terms and conditions of GAFTA Sampling Rules  
 208 No.124, are deemed to be incorporated into this contract. Samples shall be taken at the time of discharge on or before removal  
 209 from the ship or quay, unless the parties agree that quality final at loading applies, in which event samples shall be taken at  
 210 time and place of loading. The parties shall appoint superintendents, for the purposes of supervision and sampling of the  
 211 goods, from the GAFTA Register of Superintendents. Unless otherwise agreed, analysts shall be appointed from the GAFTA  
 212 Register of Analysts.  
 213

214 **18. PROHIBITION-** In case of prohibition of export, blockade or hostilities or in case of any executive or legislative act done by or  
 215 on behalf of the government of the country of origin or of the territory where the port or ports of shipment named herein is/are  
 216 situate, restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this  
 217 contract and to the extent of such total or partial restriction to prevent fulfilment whether by shipment or by any other means  
 218 whatsoever and to that extent this contract or any unfulfilled portion thereof shall be cancelled. Sellers shall advise Buyers without  
 219 delay with the reasons therefor and, if required, Sellers must produce proof to justify the cancellation.  
 220

221 **19. LOADING STRIKE-**  
 222 (a) Should shipment of the goods or any part thereof be prevented at any time during the last 28 days of guaranteed time of  
 223 shipment or at any time during guaranteed contract period if such be less than 28 days, by reason of riots, strikes or lock-outs at  
 224 port(s) of loading or elsewhere preventing the forwarding of the goods to such port or ports, then the Shipper shall be entitled at  
 225 the termination of such riots, strikes or lock-outs to as much time, not exceeding 28 days, for shipment from such port or ports as  
 226 was left for shipment under the contract prior to the outbreak of the riots, strikes or lock-outs, and in the event of the time left for  
 227 shipment under the contract being 14 days or less, a minimum extension of 14 days shall be allowed. In the event of further riots,  
 228 strikes or lock-outs occurring during the time by which the guaranteed time of shipment has been extended by reason of the  
 229 provisions of the foregoing paragraph, the additional extension shall be limited to the actual duration of such further riots, strikes  
 230 or lock-outs. In case of non-fulfilment under the above conditions the date of default shall be similarly deferred.  
 231 (b). The Shipper shall serve notice naming the ports not later than 3 business days after the last day of guaranteed time of shipment  
 232 if he intends to claim an extension of time for shipment, such notice shall limit the port(s) for shipment after expiry of contract  
 233 period to those from which an extension is claimed.  
 234 (c). If required by Buyers, Sellers must provide documentary evidence to establish any claim for extension under this clause.  
 235

236 **20. NOTICES-** All notices required to be served on the parties pursuant to this contract shall be communicated rapidly in legible  
 237 form. Methods of rapid communication for the purposes of this clause are defined and mutually recognised as: - either telex,  
 238 or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other electronic means, always subject to the  
 239 proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the  
 240 case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal appointed pursuant to the Arbitration  
 241 Clause, that the notice was actually transmitted to the addressee. In case of resales/repurchases all notices shall be served  
 242 without delay by sellers on their respective buyers or vice versa and any notice received after 1600 hours on a business day  
 243 shall be deemed to have been received on the business day following. A notice to the Brokers or Agent shall be deemed a  
 244 notice under this contract.  
 245

246 **21. NON-BUSINESS DAYS-** Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and  
 247 any days, which GAFTA may declare as non-business days for specific purposes, shall be non-business days. Should the time  
 248 limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be extended until the first  
 249 business day thereafter. The period of shipment shall not be affected by this clause.  
 250

251 **22. DEFAULT-** In default of fulfilment of contract by either party, the following provisions shall apply: -

(a) The party other than the defaulter shall, at their discretion have the right, after serving a notice on the defaulter to sell or purchase, as the case may be, against the defaulter, and such sale or purchase shall establish the default price.

(b) If either party be dissatisfied with such default price or if the right at (a) above is not exercised and damages cannot be mutually agreed, then the assessment of damages shall be settled by arbitration.

(c) The damages payable shall be based on, but not limited to, the difference between the contract price and either the default price established under (a) above or upon the actual or estimated value of the goods, on the date of default, established under (b) above.

(d) In no case shall damages include loss of profit on any sub-contracts made by the party defaulted against or others unless the Arbitrator(s) or Board of Appeal, having regard to special circumstances, shall in his/their sole and absolute discretion think fit.

(e) Damages, if any, shall be computed on the quantity appropriated if any but, if no such quantity has been appropriated then on the mean contract quantity, and any option available to either party shall be deemed to have been exercised accordingly in favour of the mean contract quantity.

(f) Default may be declared by Sellers at any time after expiry of the contract period, and the default date shall then be the first business day after the date of Sellers' advice to their Buyers. If default has not already been declared then (notwithstanding the provisions stated in the Appropriation Clause) if notice of appropriation has not been served by the 10th consecutive day after the last day for appropriation laid down in the contract, the Sellers shall be deemed to be in default, and the default date shall then be the first business day thereafter.

23. **INSOLVENCY-** If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or have a Bankruptcy Petition presented against him (any of which acts being hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or the Receiver, Administrator, Liquidator or other person representing the party committing the Act of Insolvency) that such notice was thus served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out at the market price ruling on the business day following the serving of the notice. If such notice has not been served, then the other party, on learning of the occurrence of the Act of Insolvency, shall have the option of declaring the contract closed out at either the market price on the first business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market price ruling on the first business day after the date when the Act of Insolvency occurred. In all cases the other party to the contract shall have the option of ascertaining the settlement price on the closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the re-purchase or re-sale price shall be the amount payable or receivable under this contract.

24. **CIRCLE-** Where Sellers re-purchase from their Buyers or from any subsequent Buyer the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same description, from the same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for shipment to the same port(s) of destination during the same period of shipment). Different currencies shall not invalidate the circle.

Subject to the terms of the Prohibition Clause in the contract, if the goods are not appropriated, or, having been appropriated documents are not presented, invoices based on the mean contract quantity shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days after the last day for appropriation, or, should the circle not be ascertained before the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained.

Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by the market price on the first day for contractual shipment and invoices shall be settled between each Buyer and his Seller in the circle by payment of the differences between the market price and the relative contract price in currency of the contract.

All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been ascertained in accordance with this clause same shall be binding on all parties to the circle. As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract. Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between the closing out price and the contract price.

25. **DOMICILE-** This contract shall be deemed to have been made in England and to be performed in England, notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance with the laws of England. Except for the purpose of enforcing any award made in pursuance of the Arbitration Clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief, (save for obtaining security only for the claim or counter-claim), the exercise of the powers of the Court in relation to the arbitration proceedings and any dispute other than a dispute which shall fall within the jurisdiction of arbitrators or board of appeal of the Association pursuant to the Arbitration Clause of this contract. For the purpose of any legal proceedings each party shall be deemed to be ordinarily resident or carrying on business at the offices of The Grain and Feed Trade Association, (GAFTA), England, and any party residing or carrying on business in Scotland shall be held to have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of

proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade Association, together with the posting of a copy of such proceedings to his address outside England, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.

**26. ARBITRATION-**

(a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No 125, in the edition current at the date of this contract, such Rules are incorporated into and form part of this Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the application of such Rules.

(b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first have been heard and determined by the arbitrator(s) or a board of appeal, as the case may be, in accordance with the Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or board of appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any persons claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute or claim.

(c) Nothing contained under this Arbitration Clause shall prevent the parties from seeking to obtain security in respect of their claim or counterclaim via legal proceedings in any jurisdiction, provided such legal proceedings shall be limited to applying for and/or obtaining security for a claim or counterclaim, it being understood and agreed that the substantive merits of any dispute or claim shall be determined solely by arbitration in accordance with the GAFTA Arbitration Rules, No 125.

**27. INTERNATIONAL CONVENTIONS-**

The following shall not apply to this contract: -

(a) The Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967;

(b) The United Nations Convention on Contracts for the International Sale of Goods of 1980; and

(c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980.

(d) Incoterms.

(e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to this contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.

Sellers .....Buyers.....

Printed in England and issued by

**GAFTA**  
**(THE GRAIN AND FEED TRADE ASSOCIATION)**  
 GAFTA HOUSE, 6 CHAPEL PLACE, RIVINGTON ST, LONDON EC2A 3SH

## EXHIBIT 4



# Agrimpex Co. Limited

Regal House, 1138 High Road, London, N20 0RA  
Telephone: 020 8446 6921 Fax: 020 8446 7116 Telex: 296142 AGRICO G.  
e-mail: trade@agrimport.co.uk

Contract of Sale No. DFS/56607

Date 17th July 2007

Buyer  
Jaki SPA  
Foro Buonaparte, 63  
20121 Milano  
Italy

Dear Sirs,  
We confirm having sold to you on 17/07/2007 the following:-

COMMODITY: Sudanese durra feterita 2005/2006 and/or 2006/2007  
crop at sellers option cleaned to within maximum 3% admixture,  
maximum 0.50% Tannin in sound good condition at time and place of  
shipment.  
Quality/condition/description all final as per certificate/s issued at time  
of shipment by SGS or their agents in Sudan.  
Delivered weight.

QUANTITY: One cargo/cargoes 20,000 Mt 10% more or less at sellers option and at  
contract price.

SHIPMENT: September/October 2007 from origin.  
Sellers option to ship any date during this shipment period provided  
that B/Ls are dated not earlier than 21 days from the date of the first  
B/L's issued against shipment executing contract no. DFS/56407  
dated 10/07/2007.

PACKING: In bulk.

PRICE: US\$ 241.50 (Two hundred and forty one US Dollars and fifty cents)  
per metric ton.  
C+T Free Out one Italian Adriatic port out of Venice/Ancona/Ravenna  
at buyers option, where buyers guarantee berth to accommodate vessel  
upto 31' feet swd. In the event buyers want additional ports, then this  
will be as per rates stipulated in the Charter Party which shall be for  
buyers account.  
Discharge port to be declared at sellers first demand but not later  
than commencement of loading of vessel.

PAYMENT: 100% cash against documents on presentation in Italy with payment  
latest on arrival of vessel/s at discharge port and prior commencement  
of discharge by T/T. T/T charges for buyers account.  
Should documents be presented at buyers bank before 11:00 hrs AM  
then sellers will be credited with value within 48 hours, otherwise  
within 72 hours value.

AGRIMPEx CO LIMITED

(Cont/d...)

13. LUG. 2007 17:49

JAKIL SPA

NR. 391 P. 2

**Agrimpex Co. Limited**

Regal House, 1138 High Road, London, N20 0RA  
 Telephone: 020 8446 6921 Fax: 020 8446 7116 Telex: 296142 AGRICO G.  
 e-mail: trade@agrimport.co.uk

Contract of Sale No. DFS/56607

Date 17th July 2007

**PAYMENT  
CONT'D.....:**

In the event vessel/s arrive prior presentation of shipping documents sellers have the option to either ask buyers to take delivery on first class bank guarantee as required by owners of vessel pending presentation of shipping documents. The relative charges of such bank guarantee for sellers account, or alternatively 100% cash latest on arrival of vessel/s before breaking bulk against presentation of original invoice, insurance certificate and indemnity letter for allowing the discharge of the goods without production of B/Ls.

Such letter of indemnity to be confirmed directly from vessel agents to the buyers. This confirmation to reach buyers before payment is effected and then cargo will be released against presentation of the original letter of indemnity to vessels agents.

**DISCHARGE:**

Buyers to discharge goods at their risk and expenses at the average rate of 5,000 MT basis 4 hatches, in the case of 3 hatches or less discharging rate to be adjusted/reduced prorata if vessel singledecker/bulkcarrier, or at the rate of 1,500 Mt if vessel tweendecker per weather working day of 24 consecutive hours SSHEX unless used and prorata. If used only time actually worked to count as laytime.

Time at first disport to start counting as from 08.00 AM hours the next working day after presentation of N.O.R. given during ordinary office hours. WIBON/WIPON/WIFPON/WICCON.

Demurrage as per C/P rate for buyers account. Despatch to be half of demurrage.

All other terms and conditions not in conflict with the above as per governing Charter Party.

**OTHER TERMS/  
CONDITIONS:**

- 1) - All export duties and/or taxes and/or levies present and/or future are for sellers account.
- 2) - All import duties and/or taxes and/or levies present and/or future are for buyers account.
- 3) - Buyers have the exclusivity on performing vessel/s at discharge port.
- 4) - Sellers guarantee provision on EUR 1 certificate at discharge port before completion of discharge and a copy of phytosanitary certificate on board vessel.

**AGRIMPEX CO LIMITED**

(Cont'd...)

Page 2

Directors: P. G. Philpott, K. L. Philpott. Registration number: 01370076

18. LUG. 2007 17:49

JAKIL SPA

NR. 391

P. 3

## Agrimex Co. Limited

Regal House, 1135 High Road, London, N20 0RA  
Telephone: 020 8446 6921 Fax: 020 8446 7116 Telex: 296142 AGRICO G.  
e-mail: trade@agrimex.co.uk

Contract of Sale No. DFS/56607

Date 17th July 2007

### OTHER TERMS/ CONDITIONS CONT'D.....:

- 5) - Fumigation certificate
- 6) - Vessel/s to be singledecker/bulkcarrier/tweendecker classed highest Lloyds register or equivalent. Vessel/s over 20 years old is/are acceptable in which case overage premium to be for sellers account as per Official Lloyds London Schedule.
- 7) - In the event that the quantity shown on the EUR 1 certificate is higher than that shown on B/L quantity, buyers to accept same.

All other terms, conditions and rules not in contradiction with the above, as per GAFTA contract 61 including the Arbitration Rule form No: 125 (of which the parties admit that they have knowledge and notice) apply to this contract, the details given shall be taken as having been written into such form in the appropriate place.

The validity of this contract will be unaffected by the non return of the counter confirmation duly signed by buyers.

SELLERS

AGRIMEX CO LIMITED

BUYERS

JAKIL S.p.A.



Effective 1<sup>st</sup> January 2006

# Gafta No.61

Copyright  
THE GRAIN AND FEED TRADE ASSOCIATION

**CONTRACT FOR MEDITERRANEAN AND MOROCCO  
IN BULK OR BAGS  
CARGOES  
TALE QUALE - CIF TERMS**

\* delete/specify as applicable

Date .....

1 **SELLERS** .....2  
3 **INTERVENING AS BROKERS** .....4  
5 **BUYERS** .....

6 have this day entered into a contract on the following terms and conditions.

7  
8 1. **GOODS-** a cargo of .....  
9 shipped in bulk and/or bags. If in bags, then the bags to be of suitable strength to withstand ordinary wear and tear to port of  
10 destination. Such bags to be taken and paid for as goods.

11  
12 2. **QUANTITY-** .....units, 5% more or less.  
13 Sellers have the option of shipping a further 5% more or less on contract quantity, excess or deficiency over the above 5% to be  
14 settled at the CIF price on the date of the last bill of lading, and on the quantity thereof; value to be fixed by arbitration, unless  
15 mutually agreed

16  
17 3. **PRICE AND DESTINATION - At** .....  
18 \* per tonne of 1000 kilograms }  
19 } gross weight, cost, insurance and freight to .....  
20 \* per ton of 1016 kilograms or 2240 lbs. }

21  
22 4. **BROKERAGE**.....per tonne, to be paid by Sellers on the mean contract quantity, goods lost or not  
23 lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract under the terms of  
24 the Prohibition Clause. Brokerage shall be due on the day shipping documents are exchanged or, if the goods are not  
25 appropriated then brokerage shall be due on the 30th consecutive day after the last day for appropriation.

26  
27 5. **QUALITY-**  
28 \* **Warranted to contain** ..... at time and place of discharge.

29  
30 \* **Natural weight of** ..... kilograms per hectolitre guaranteed at time and place of  
31 discharge, to be ascertained according to GAFTA Sampling Rules No.124, or other accepted authority, and any allowances  
32 determined to be allowed for off contract price, in accordance with GAFTA Sampling Rules No. 124.

33  
34 \* **Admixture Barley-** Any admixture of dirt and/or other foreign substance over ..... % to be allowed for by  
35 Sellers at contract price, but any pulse, seed or grain other than Barley to be reckoned as foreign substances at half their  
36 quantities.

37 \* **Other Grain and Seed-** Any admixture of dirt and/or other foreign substance over ..... % to be allowed for by  
38 Sellers at contract price. The percentage of admixture to be determined by GAFTA, or its duly appointed Analyst.

39  
40 \* **Official** ..... certificate of inspection, or certification of inspection of..... at time and place of  
41 loading into the ocean carrying vessel, shall be final as to quality. The Buyers shall not be entitled to reject a tender of a  
42 higher grade of grain of the same colour and description.

43 \* **F.A.Q.** (fair average quality) of the season's shipment at time and place of loading, to be assessed upon the basis of, and by  
44 comparison with the GAFTA F.A.Q. standard of the month during which the bill of lading is dated. In the event of no F.A.Q.  
45 Standard being established by the Association, the Arbitrator(s) shall in his/their discretion decide what is the fair average  
46 quality. An average sample of the delivery shall be taken and sealed jointly at the port of discharge by the representatives of  
47 the shipper and the representatives of the holders of the bill of lading or shipper's delivery order, and shall be forwarded  
48 immediately to the Association for the purposes of establishing the F.A.Q. standard. The expenses of such sampling and  
49 forwarding shall be paid half by the Receiver and half by the Sellers. Place of shipment under this contract shall be

understood as the port or group of ports adopted by the appointed Standards Committee in making the Standard. If the difference between the delivery and the F.A.Q. Standard shall not amount to 0.50% on contract price, no allowance for quality shall be due; otherwise the Buyers shall be entitled to the full difference in value.

- \* **Sample**, at time and place of shipment about as per sealed sample marked..... in possession of;..... the word "about" when referring to quality shall mean the equivalent of 0.50% on contract price.

Difference in quality shall not entitle Buyers to reject except under the award of arbitrator(s) or board of appeal, as the case may be, referred to in the Arbitration Rules specified in the Arbitration Clause.

**Condition-** Shipment shall be made in good condition. Should the goods arrive out of condition, due regard shall be made for the time of the year in which the shipment took place. The fact of the goods so arriving shall not necessarily be sufficient proof of an improper shipment.

6. **PERIOD OF SHIPMENT-** as per bill(s) of lading dated or to be dated ..... The bill(s) of lading to be dated when the goods are actually on board. Date of the bill(s) of lading shall be accepted as proof of date of shipment in the absence of evidence to the contrary. In any month containing an odd number of days, the middle day shall be accepted as being in both halves of the month.

7. **SALES BY NAMED VESSELS** – For all sales by named vessels, the following shall apply: -  
 (a) Position of vessel is mutually agreed between Buyers and Sellers;  
 (b) The word "now" to be inserted before the word "classed" in the Ship's Classification Clause;  
 (c) Appropriation Clause cancelled if sold "shipped".

8. **SHIP'S CLASSIFICATION** - Shipment from ..... by first class mechanically self-propelled vessel(s) suitable for the carriage of the contract goods, classed in accordance with the Institute Classification Clause of the International Underwriting Association in force at time of shipment, excluding tankers and vessels which are either classified in Lloyd's Register or described in Lloyd's Shipping Index as "Ore/Oil" vessels.

9. **EXTENSION OF SHIPMENT-** The contract period for shipment, if such be 31 days or less, shall be extended by an additional period of not more than 8 days, provided that Sellers serve notice claiming extension not later than the next business day following the last day of the originally stipulated period. The notice need not state the number of additional days claimed. Sellers shall make an allowance to Buyers, to be deducted in the invoice from the contract price, based on the number of days by which the originally stipulated period is exceeded, in accordance with the following scale:-

- 1 to 4 additional days, 0.50%;  
 5 or 6 additional days, 1%;  
 7 or 8 additional days 1.50% of the gross contract price.

If, however, after having served notice to Buyers as above, Sellers fail to make shipment within such 8 days, then the contract shall be deemed to have called for shipment during the originally stipulated period plus 8 days, at contract price less 1.50%, and any settlement for default shall be calculated on that basis. If any allowance becomes due under this clause, the contract price shall be deemed to be the original contract price less the allowance and any other contractual differences shall be settled on the basis of such reduced price.

10. **APPROPRIATION-**

- (a) Notice of appropriation shall state the vessel's name, the approximate weight shipped, and the date or the presumed date of the bill of lading.

(b) The notice of appropriation shall within 10 consecutive days, (or if shipped from a Moroccan port 7 consecutive days), from the date of the bill(s) of lading be served by or on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers named in the contract. The Non-Business Days Clause shall not apply.

(c) Notice of appropriation shall, within the period stated in sub-clause (b) be served by or on behalf of subsequent Sellers on their Buyers or on the Selling Agent or Brokers named in the contract, but if notice of appropriation is received by subsequent Sellers on the last day or after the period stated in sub-clause (b) from the date of the bill of lading, their notice of appropriation shall be deemed to be in time if served: -

- (1) On the same calendar day, if received not later than 1600 hours on any business day, or

- (2) Not later than 1600 hours on the next business day, if received after 1600 hours or on a non-business day.

(d) A notice of appropriation served on a Selling Agent or Brokers named in the contract shall be considered an appropriation served on Buyers. A Selling Agent or Brokers receiving a notice of appropriation shall serve like notice of appropriation in accordance with the provisions of this clause. Where the Shipper or subsequent Sellers serves the notice of appropriation on the Selling Agent, such Selling Agent may serve notice of appropriation either direct to the Buyers or to the Brokers.

(e) The bill of lading date stated in the notice of appropriation shall be for information only and shall not be binding, but in fixing the period laid down by this clause for serving notices of appropriation the actual date of the bill of lading shall prevail.

(f) Every notice of appropriation shall be open to correction of any errors occurring in transmission, provided that the sender is not responsible for such errors, and for any previous error in transmission which has been repeated in good faith.

(g) Should the vessel arrive before receipt of the appropriation and any extra expenses is incurred thereby, such expenses shall be borne by Sellers.

(h) When a valid notice of appropriation has been received by Buyers, it shall not be withdrawn except with their consent.

(i) In the event of less than 95 tonnes being tendered by any one vessel Buyers shall be entitled to refund of any proved extra expenses for sampling, analysis and lighterage incurred thereby at port of discharge.

## 11. PAYMENT-

- (a) **Payment** ..... % of invoice amount by cash in ..... in exchange for and on presentation of shipping documents.
- (b) **Shipping documents** – shall consist of - 1. Invoice. 2. Full set(s) of on board Bill(s) of Lading and/or Ship's Delivery Order(s) and/or other Delivery Order(s) in negotiable and transferable form. Such other Delivery Order(s) if required by Buyers, to be countersigned by the Shipowners, their Agents or a recognised bank. 3. Policy (ies) and/or Insurance Certificate(s) and/or Letter(s) of Insurance in the currency of the contract. The Letter(s) of Insurance to be certified by a recognised bank if required by Buyers. 4. Other documents as called for under the contract. Buyers agree to accept documents containing the Chamber of Shipping War Deviation Clause and/or other recognised official War Risk Clause.
- (c) In the event of shipping documents not being available when called for by Buyers, or on arrival of the vessel at destination, Sellers shall provide other documents or an indemnity entitling Buyers to obtain delivery of the goods and payment shall be made by Buyers in exchange for same, but such payment shall not prejudice Buyers' rights under the contract when shipping documents are eventually available.
- (d) Should Sellers fail to present shipping documents or other documents or an indemnity entitling Buyers to take delivery, Buyers shall take delivery under an indemnity provided by themselves and shall pay for the other documents when presented. Any reasonable extra expenses, including the costs of such indemnity or extra charges incurred by reason of the failure of Sellers to provide such documents, shall be borne by Sellers, but such payment shall not prejudice Buyers' rights under the contract when shipping documents are eventually available.
- (e) Should shipping documents be presented with an incomplete set of bill(s) of lading or should other shipping documents be missing, payment shall be made provided that delivery of such missing documents is guaranteed, such guarantee to be countersigned, if required by Buyers, by a recognised bank.
- (f) Costs of collection shall be for account of Sellers, but if Buyers demand presentation only through a bank of their choice, in that event any additional collection costs shall be borne by Buyers.
- (g) No obvious clerical error in the documents shall entitle Buyers to reject them or delay payment, but Sellers shall be responsible for all loss or expense caused to Buyers by reason of such error and Sellers shall on request furnish an approved guarantee in respect thereto.
- (h) Amounts payable under this contract shall be settled without delay. If not so settled, either party may notify the other that a dispute has arisen and serve a notice stating his intention to refer the dispute to arbitration in accordance with the Arbitration Rules.
- (i) **Interest** – If there has been unreasonable delay in any payment, interest appropriate to the currency involved shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which shall be settled by arbitration. Otherwise interest shall be payable only where specifically provided in the terms of the contract or by an award of arbitration. The terms of this clause do not override the parties' contractual obligation under sub-clause (a).

## 12. INSURANCE- Sellers shall provide insurance on terms not less favourable than those set out hereunder, and as set out in detail in GAFTA Insurance Terms No.72 viz:-

## (a) Risks Covered: -

- |  |                        |
|--|------------------------|
| Cargo Clauses (WA) with average payable, with 3% franchise or better terms | - Section 2 of Form 72 |
| War Clauses (Cargo)  | - Section 4 of Form 72 |
| Strikes, Riots and Civil Commotions Clauses (Cargo)                        | - Section 5 of Form 72 |

(b) **Insurers** - The insurance to be effected with first class underwriters and/or companies who are domiciled or carrying on business in the United Kingdom or who, for the purpose of any legal proceedings, accept a British domicile and provide an address for service of process in London, but for whose solvency Sellers shall not be responsible.

(c) **Insurable Value** - Insured amount to be for not less than 2% over the invoice amount, including freight when freight is payable on shipment or due in any event, ship and/or cargo lost or not lost, and including the amount of any War Risk premium payable by Buyers.

(d) **Freight Contingency** - When freight is payable on arrival or on right and true delivery of the goods and the insurance does not include the freight, Sellers shall effect insurance upon similar terms, such insurance to attach only as such freight becomes payable, for the amount of the freight plus 2%, until the termination of the risk as provided in the above mentioned clauses, and shall undertake that their policies are so worded that in the case of a particular or general average claim the Buyers shall be put in the same position as if the C.I.F. value plus 2% were insured from the time of shipment.

(e) **Certificates/Policies** - Sellers shall give all policies and/or certificates and/or letters of insurance provided for in this contract, (duly stamped if applicable) for original and increased value (if any) for the value stipulated in (c) above. In the event of a certificate of insurance being supplied, it is agreed that such certificate shall be exchanged by Sellers for a policy if and when required and such certificate shall state on its face that it is so exchangeable. If required by Buyers, letter(s) of insurance shall be guaranteed by a recognised bank, or by any other guarantor who is acceptable to Buyers.

(f) **Total Loss** - In the event of total or constructive total loss, or where the amount of the insurance becomes payable in full, the insured amount in excess of 2% over the invoice amount shall be for Sellers' account and the party in possession of the policy (ies) shall collect the amount of insurance and shall thereupon settle with the other party on that basis.

(g) **Currency of Claims** - Claims to be paid in the currency of the contract.

(h) **War and Strike Risks Premiums** – Any premium in excess of 0.50% to be for account of Buyers. The rate of such insurance not to exceed the rate ruling in London at time of shipment or date of vessel's sailing whichever may be adopted by underwriters. Such excess premium shall be claimed from Buyers, wherever possible, with the Provisional Invoice, but in no case later than the date of vessel's arrival, or not later than 7 consecutive days after the rate has been agreed with underwriters, whichever may be the later, otherwise such claim shall be void unless, in the opinion of Arbitrators, the delay is justifiable. Sellers' obligation to provide War Risk Insurance shall be limited to the terms and conditions in force and generally obtainable in London at time of shipment.

- 184 (i) Where Sellers are responsible for allowances or other payments to Buyers under Rye Terms or other contractual terms, (and  
185 which risks are also covered by the insurance provided by Sellers), the Buyers, on receipt of settlement, shall immediately return to  
186 Sellers the insurance documents originally received from them and shall, if required, subrogate to Sellers all right of claim against  
187 the Insurers in respect of such matters.  
188
- 189 **13. DUTIES, TAXES, LEVIES, ETC.** – All export duties, taxes, levies, etc., present or future, in country of origin, shall be for  
190 Sellers' account. All import duties, taxes, levies, etc., present or future, in country of destination, shall be for Buyers' account.  
191
- 192 **14. DISCHARGE-** Ship to discharge according to the custom of the port. Ship to discharge at the rate of .....  
193  
194 If documents are tendered which do not provide for discharge as above, or contain contrary stipulations, Sellers to be responsible  
195 to Buyers for all extra expenses incurred thereby.  
196
- 197 **15. WEIGHING-** the terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this contract.  
198 Unless otherwise agreed, final settlement shall be made on the basis of gross delivered weights at time and place of discharge  
199 at Buyers' expense. If the place of destination is outside the port limits, Buyers agree to pay the extra expenses incurred by  
200 Sellers or their agents for weighing. No payment shall be made for increase in weight occasioned by water and/or oil during  
201 the voyage. If final at time and place of loading, as per GAFTA registered superintendents' certificate at Sellers' choice and  
202 expense, (in which case the Deficiency Clause will not apply).  
203
- 204 **16. DEFICIENCY-** any deficiency in the bill of lading weight shall be paid for by Sellers and any excess over bill of lading  
205 weight shall be paid for by Buyers at contract price.  
206
- 207 **17. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS-** the terms and conditions of GAFTA Sampling Rules  
208 No.124, are deemed to be incorporated into this contract. Samples shall be taken at the time of discharge on or before removal  
209 from the ship or quay, unless the parties agree that quality final at loading applies, in which event samples shall be taken at  
210 time and place of loading. The parties shall appoint superintendents, for the purposes of supervision and sampling of the  
211 goods, from the GAFTA Register of Superintendents. Unless otherwise agreed, analysts shall be appointed from the GAFTA  
212 Register of Analysts.  
213
- 214 **18. PROHIBITION-** In case of prohibition of export, blockade or hostilities or in case of any executive or legislative act done by or  
215 on behalf of the government of the country of origin or of the territory where the port or ports of shipment named herein is/are  
216 situate, restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this  
217 contract and to the extent of such total or partial restriction to prevent fulfilment whether by shipment or by any other means  
218 whatsoever and to that extent this contract or any unfulfilled portion thereof shall be cancelled. Sellers shall advise Buyers without  
219 delay with the reasons therefor and, if required, Sellers must produce proof to justify the cancellation.  
220
- 221 **19. LOADING STRIKE-**  
222 (a) Should shipment of the goods or any part thereof be prevented at any time during the last 28 days of guaranteed time of  
223 shipment or at any time during guaranteed contract period if such be less than 28 days, by reason of riots, strikes or lock-outs at  
224 port(s) of loading or elsewhere preventing the forwarding of the goods to such port or ports, then the Shipper shall be entitled at  
225 the termination of such riots, strikes or lock-outs to as much time, not exceeding 28 days, for shipment from such port or ports as  
226 was left for shipment under the contract prior to the outbreak of the riots, strikes or lock-outs, and in the event of the time left for  
227 shipment under the contract being 14 days or less, a minimum extension of 14 days shall be allowed. In the event of further riots,  
228 strikes or lock-outs occurring during the time by which the guaranteed time of shipment has been extended by reason of the  
229 provisions of the foregoing paragraph, the additional extension shall be limited to the actual duration of such further riots, strikes  
230 or lock-outs. In case of non-fulfilment under the above conditions the date of default shall be similarly deferred.  
231 (b). The Shipper shall serve notice naming the ports not later than 3 business days after the last day of guaranteed time of shipment  
232 if he intends to claim an extension of time for shipment, such notice shall limit the port(s) for shipment after expiry of contract  
233 period to those from which an extension is claimed.  
234 (c). If required by Buyers, Sellers must provide documentary evidence to establish any claim for extension under this clause.  
235
- 236 **20. NOTICES-** All notices required to be served on the parties pursuant to this contract shall be communicated rapidly in legible  
237 form. Methods of rapid communication for the purposes of this clause are defined and mutually recognised as: - either telex,  
238 or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other electronic means, always subject to the  
239 proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the  
240 case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal appointed pursuant to the Arbitration  
241 Clause, that the notice was actually transmitted to the addressee. In case of resales/repurchases all notices shall be served  
242 without delay by sellers on their respective buyers or vice versa and any notice received after 1600 hours on a business day  
243 shall be deemed to have been received on the business day following. A notice to the Brokers or Agent shall be deemed a  
244 notice under this contract.  
245
- 246 **21. NON-BUSINESS DAYS-** Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and  
247 any days, which GAFTA may declare as non-business days for specific purposes, shall be non-business days. Should the time  
248 limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be extended until the first  
249 business day thereafter. The period of shipment shall not be affected by this clause.  
250
- 251 **22. DEFAULT-** In default of fulfilment of contract by either party, the following provisions shall apply: -



(a) The party other than the defaulter shall, at their discretion have the right, after serving a notice on the defaulter to sell or purchase, as the case may be, against the defaulter, and such sale or purchase shall establish the default price.

(b) If either party be dissatisfied with such default price or if the right at (a) above is not exercised and damages cannot be mutually agreed, then the assessment of damages shall be settled by arbitration.

(c) The damages payable shall be based on, but not limited to, the difference between the contract price and either the default price established under (a) above or upon the actual or estimated value of the goods, on the date of default, established under (b) above.

(d) In no case shall damages include loss of profit on any sub-contracts made by the party defaulted against or others unless the Arbitrator(s) or Board of Appeal, having regard to special circumstances, shall in his/their sole and absolute discretion think fit.

(e) Damages, if any, shall be computed on the quantity appropriated if any but, if no such quantity has been appropriated then on the mean contract quantity, and any option available to either party shall be deemed to have been exercised accordingly in favour of the mean contract quantity.

(f) Default may be declared by Sellers at any time after expiry of the contract period, and the default date shall then be the first business day after the date of Sellers' advice to their Buyers. If default has not already been declared then (notwithstanding the provisions stated in the Appropriation Clause) if notice of appropriation has not been served by the 10th consecutive day after the last day for appropriation laid down in the contract, the Sellers shall be deemed to be in default, and the default date shall then be the first business day thereafter.

23. **INSOLVENCY-** If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or have a Bankruptcy Petition presented against him (any of which acts being hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or the Receiver, Administrator, Liquidator or other person representing the party committing the Act of Insolvency) that such notice was thus served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out at the market price ruling on the business day following the serving of the notice. If such notice has not been served, then the other party, on learning of the occurrence of the Act of Insolvency, shall have the option of declaring the contract closed out at either the market price on the first business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market price ruling on the first business day after the date when the Act of Insolvency occurred. In all cases the other party to the contract shall have the option of ascertaining the settlement price on the closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the re-purchase or re-sale price shall be the amount payable or receivable under this contract.

24. **CIRCLE-** Where Sellers re-purchase from their Buyers or from any subsequent Buyer the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same description, from the same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for shipment to the same port(s) of destination during the same period of shipment). Different currencies shall not invalidate the circle.

Subject to the terms of the Prohibition Clause in the contract, if the goods are not appropriated, or, having been appropriated documents are not presented, invoices based on the mean contract quantity shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days after the last day for appropriation, or, should the circle not be ascertained before the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained.

Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by the market price on the first day for contractual shipment and invoices shall be settled between each Buyer and his Seller in the circle by payment of the differences between the market price and the relative contract price in currency of the contract.

All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been ascertained in accordance with this clause same shall be binding on all parties to the circle. As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract. Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between the closing out price and the contract price.

25. **DOMICILE-** This contract shall be deemed to have been made in England and to be performed in England, notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance with the laws of England. Except for the purpose of enforcing any award made in pursuance of the Arbitration Clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief, (save for obtaining security only for the claim or counter-claim), the exercise of the powers of the Court in relation to the arbitration proceedings and any dispute other than a dispute which shall fall within the jurisdiction of arbitrators or board of appeal of the Association pursuant to the Arbitration Clause of this contract. For the purpose of any legal proceedings each party shall be deemed to be ordinarily resident or carrying on business at the offices of The Grain and Feed Trade Association, (GAFTA), England, and any party residing or carrying on business in Scotland shall be held to have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of

proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade Association, together with the posting of a copy of such proceedings to his address outside England, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.

**26. ARBITRATION-**

(a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No 125, in the edition current at the date of this contract, such Rules are incorporated into and form part of this Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the application of such Rules.

(b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first have been heard and determined by the arbitrator(s) or a board of appeal, as the case may be, in accordance with the Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or board of appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any persons claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute or claim.

(c) Nothing contained under this Arbitration Clause shall prevent the parties from seeking to obtain security in respect of their claim or counterclaim via legal proceedings in any jurisdiction, provided such legal proceedings shall be limited to applying for and/or obtaining security for a claim or counterclaim, it being understood and agreed that the substantive merits of any dispute or claim shall be determined solely by arbitration in accordance with the GAFTA Arbitration Rules, No 125.

**27. INTERNATIONAL CONVENTIONS-**

The following shall not apply to this contract: -

(a) The Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967;

(b) The United Nations Convention on Contracts for the International Sale of Goods of 1980; and

(c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980.

(d) Incoterms.

(e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to this contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.

Sellers .....Buyers.....

Printed in England and issued by

**GAFTA**  
**(THE GRAIN AND FEED TRADE ASSOCIATION)**  
 GAFTA HOUSE, 6 CHAPEL PLACE, RIVINGTON ST, LONDON EC2A 3SH



## EXHIBIT 5

30. JUL 2007 10:51

JAKIL SPA

NR. 114

## Agrimpex Co. Limited

Regal House, 1138 High Road, London, N20 0RA  
Telephone: 020 8445 6921 Fax: 020 8445 7116 Telex: 296142 AGRICO G.  
e-mail: trade@agrmpex.co.uk

Contract of Sale No. DFS/56507

Date 27th July 2007

Buyer

Jakil SPA

Foro Buonaparte, 68

20121 Milano

Italy

Dear Sirs,

We confirm having sold to you on 27/07/2007 the following:-

**COMMODITY:** Sudanese durra feterita 2005/2006 and/or 2006/2007  
crop at sellers option cleaned to within maximum 3% admixture,  
maximum 0.50% Tannin in sound good condition at time and place of  
shipment.  
Quality/condition/description all final as per certificate/s issued at time  
of shipment by SGS or their agents in Sudan.  
Delivered weight.

**QUANTITY:** One cargo/cargoes 20,000 Mt 10% more or less at sellers option and at  
contract price.

**SHIPMENT:** October/November 2007 from origin.  
Sellers option to ship any date during this shipment period provided  
that B/Ls are dated not earlier than 21 days from the date of the first  
B/L's issued against shipment executing contract no. DFS/56607  
dated 17/07/2007.

**PACKING:** In bulk.

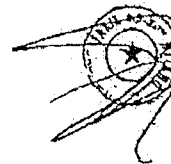
**PRICE:** US\$ 260 (Two hundred and sixty US Dollars) per mton.  
C+F Free Out one Italian Adriatic port out of Venice/Ancona/Ravenna  
at buyers option, where buyers guarantee berth to accommodate vessel  
upto 31' feet swad. In the event buyers want additional ports, then this  
will be as per rates stipulated in the Charter Party which shall be for  
buyers account.  
Discharge port to be declared at sellers first demand but not later  
than commencement of loading of vessel.

**PAYMENT:** 100% cash against documents on presentation in Italy with payment  
latest on arrival of vessel/s at discharge port and prior commencement  
of discharge by T/T. T/T charges for buyers account.  
Should documents be presented at buyers bank before 11:00 hrs AM  
then sellers will be credited with value within 48 hours, otherwise  
within 72 hours value.

AGRIPEX CO. LTD

Page 1

Directors: P. G. Philippas, K. L. Philippas. Registration number: 01370076



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REF. NR. 1808757

JAKIL SPA

NR. 114 P. 2

**Agrimpex Co. Limited**

Regal House, 1118 High Road, London, N20 0RA  
 Telephone: 020 8446 6921 Fax: 020 8446 7116 Telex: 296142 AGRICO G.  
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(Cont/d...)

Contract of Sale No. DFS/56907

Date 27th July 2007

**PAYMENT  
CONT/D....**

In the event vessel/s arrive prior presentation of shipping documents sellers have the option to either ask buyers to take delivery on first class bank guarantee as required by owners of vessel pending presentation of shipping documents. The relative charges of such bank guarantee for sellers account, or alternatively 100% cash latest on arrival of vessel/s before breaking bulk against presentation of original invoice, insurance certificate and indemnity letter for allowing the discharge of the goods without production of B/Ls.

Such letter of indemnity to be confirmed directly from vessel agents to the buyers. This confirmation to reach buyers before payment is effected and then cargo will be released against presentation of the original letter of indemnity to vessels agents.

**DISCHARGE:**

Buyers to discharge goods at their risk and expenses at the average rate of 5,000 MT basis 4 hatches, in the case of 3 hatches or less discharging rate to be adjusted/reduced pro rata if vessel singledecker/bulkcarrier, or at the rate of 2,000 Mt if vessel tweendecker per weather working day of 24 consecutive hours SSHEX unless used and pro rata. If used only time actually worked to count as laytime.

Time at first disport to start counting as from 08.00 AM hours the next working day after presentation of N.O.R. given during ordinary office hours, WIBON/WIPON/WIFPON/WICCON.

Demurrage as per C/P rate for buyers account. Despatch to be half of demurrage.

All other terms and conditions not in conflict with the above as per governing Charter Party.

**OTHER TERMS/  
CONDITIONS:**

- 1) - All export duties and/or taxes and/or levies present and/or future are for sellers account.
- 2) - All import duties and/or taxes and/or levies present and/or future are for buyers account.
- 3) - Buyers have the exclusivity on performing vessel/s at discharge port.
- 4) - Sellers guarantee provision on EUR 1 certificate at discharge port before completion of discharge and a copy of phytosanitary certificate on board vessel.

AGRIMPEx CO. LTD

Page 2

Directors: P. G. Philippas, K. L. Philippas. Registration number: 01370976

(Cont/d...)

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REF. NR. 10808757

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JAKIL SPA

NR. 114 P. 3

# Agrimpex Co. Limited

Regal House, 1138 High Road, London, N20 0RA  
Telephone: 020 8446 6921 Fax: 020 8446 7116 Telex: 296142 AGRICO G.  
e-mail: trade@agrmpex.co.uk

Contract of Sale No: DFS/56907

Date 27th July 2007

## OTHER TERMS/ CONDITIONS CONT'D.....:

- 5) - Fumigation certificate
- 6) - Vessel/s to be singledecker/bulkcarrier/tweendecker classed highest Lloyds register or equivalent. Vessel/s over 20 years old is/are acceptable in which case coverage premium to be for sellers account as per Official Lloyds London Schedule.
- 7) - In the event that the quantity shown on the EUR 1 certificate is higher than that shown on B/L quantity, buyers to accept same.

All other terms, conditions and rules not in contradiction with the above, as per GAFTA contract 61 including the Arbitration Rule form No: 125 (of which the parties admit that they have knowledge and notice) apply to this contract, the details given shall be taken as having been written into such form in the appropriate place.

The validity of this contract will be unaffected by the non return of the counter confirmation duly signed by buyers,

SELLERS

AGRIMPEX CO. LTD

BUYERS

JAKIL S.p.A.

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Directors: P. G. Philippas, K. L. Philippas, Registration number: 01370076

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27-JUL-2007 16:27

REF. NR. 10000757

Effective 1<sup>st</sup> January 2006

# GAFTA No.61

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THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT FOR MEDITERRANEAN AND MOROCCO IN BULK OR BAGS CARGOES TALE QUALE - CIF TERMS

\* delete/specify as applicable

Date .....

1 **SELLERS** .....2  
3 **INTERVENING AS BROKERS** .....4  
5 **BUYERS** .....

6 have this day entered into a contract on the following terms and conditions.

7  
8 **1. GOODS-** a cargo of .....  
9 shipped in bulk and/or bags. If in bags, then the bags to be of suitable strength to withstand ordinary wear and tear to port of  
10 destination. Such bags to be taken and paid for as goods.11  
12 **2. QUANTITY-** .....units, 5% more or less.  
13 Sellers have the option of shipping a further 5% more or less on contract quantity, excess or deficiency over the above 5% to be  
14 settled at the CIF price on the date of the last bill of lading, and on the quantity thereof; value to be fixed by arbitration, unless  
15 mutually agreed16  
17 **3. PRICE AND DESTINATION - At** .....  
18 \* per tonne of 1000 kilograms }  
19 } gross weight, cost, insurance and freight to .....  
20 \* per ton of 1016 kilograms or 2240 lbs. }21  
22 **4. BROKERAGE**.....per tonne, to be paid by Sellers on the mean contract quantity, goods lost or not  
23 lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract under the terms of  
24 the Prohibition Clause. Brokerage shall be due on the day shipping documents are exchanged or, if the goods are not  
25 appropriated then brokerage shall be due on the 30th consecutive day after the last day for appropriation.26  
27 **5. QUALITY-**  
28 \* **Warranted to contain** ..... at time and place of discharge.29  
30 \* **Natural weight of** ..... kilograms per hectolitre guaranteed at time and place of  
31 discharge, to be ascertained according to GAFTA Sampling Rules No.124, or other accepted authority, and any allowances  
32 determined to be allowed for off contract price, in accordance with GAFTA Sampling Rules No. 124.33  
34 \* **Admixture Barley-** Any admixture of dirt and/or other foreign substance over ..... % to be allowed for by  
35 Sellers at contract price, but any pulse, seed or grain other than Barley to be reckoned as foreign substances at half their  
36 quantities.37 \* **Other Grain and Seed-** Any admixture of dirt and/or other foreign substance over ..... % to be allowed for by  
38 Sellers at contract price. The percentage of admixture to be determined by GAFTA, or its duly appointed Analyst.39  
40 \* **Official** ..... certificate of inspection, or certification of inspection of..... at time and place of  
41 loading into the ocean carrying vessel, shall be final as to quality. The Buyers shall not be entitled to reject a tender of a  
42 higher grade of grain of the same colour and description.43 \* **F.A.Q.** (fair average quality) of the season's shipment at time and place of loading, to be assessed upon the basis of, and by  
44 comparison with the GAFTA F.A.Q. standard of the month during which the bill of lading is dated. In the event of no F.A.Q.  
45 Standard being established by the Association, the Arbitrator(s) shall in his/their discretion decide what is the fair average  
46 quality. An average sample of the delivery shall be taken and sealed jointly at the port of discharge by the representatives of  
47 the shipper and the representatives of the holders of the bill of lading or shipper's delivery order, and shall be forwarded  
48 immediately to the Association for the purposes of establishing the F.A.Q. standard. The expenses of such sampling and  
49 forwarding shall be paid half by the Receiver and half by the Sellers. Place of shipment under this contract shall be

understood as the port or group of ports adopted by the appointed Standards Committee in making the Standard. If the difference between the delivery and the F.A.Q. Standard shall not amount to 0.50% on contract price, no allowance for quality shall be due; otherwise the Buyers shall be entitled to the full difference in value.

- \* **Sample**, at time and place of shipment about as per sealed sample marked..... in possession of;..... the word "about" when referring to quality shall mean the equivalent of 0.50% on contract price.

Difference in quality shall not entitle Buyers to reject except under the award of arbitrator(s) or board of appeal, as the case may be, referred to in the Arbitration Rules specified in the Arbitration Clause.

**Condition-** Shipment shall be made in good condition. Should the goods arrive out of condition, due regard shall be made for the time of the year in which the shipment took place. The fact of the goods so arriving shall not necessarily be sufficient proof of an improper shipment.

6. **PERIOD OF SHIPMENT-** as per bill(s) of lading dated or to be dated ..... The bill(s) of lading to be dated when the goods are actually on board. Date of the bill(s) of lading shall be accepted as proof of date of shipment in the absence of evidence to the contrary. In any month containing an odd number of days, the middle day shall be accepted as being in both halves of the month.

7. **SALES BY NAMED VESSELS** – For all sales by named vessels, the following shall apply: -  
 (a) Position of vessel is mutually agreed between Buyers and Sellers;  
 (b) The word "now" to be inserted before the word "classed" in the Ship's Classification Clause;  
 (c) Appropriation Clause cancelled if sold "shipped".

8. **SHIP'S CLASSIFICATION** - Shipment from ..... by first class mechanically self-propelled vessel(s) suitable for the carriage of the contract goods, classed in accordance with the Institute Classification Clause of the International Underwriting Association in force at time of shipment, excluding tankers and vessels which are either classified in Lloyd's Register or described in Lloyd's Shipping Index as "Ore/Oil" vessels.

9. **EXTENSION OF SHIPMENT-** The contract period for shipment, if such be 31 days or less, shall be extended by an additional period of not more than 8 days, provided that Sellers serve notice claiming extension not later than the next business day following the last day of the originally stipulated period. The notice need not state the number of additional days claimed. Sellers shall make an allowance to Buyers, to be deducted in the invoice from the contract price, based on the number of days by which the originally stipulated period is exceeded, in accordance with the following scale:-

- 1 to 4 additional days, 0.50%;  
 5 or 6 additional days, 1%;  
 7 or 8 additional days 1.50% of the gross contract price.

If, however, after having served notice to Buyers as above, Sellers fail to make shipment within such 8 days, then the contract shall be deemed to have called for shipment during the originally stipulated period plus 8 days, at contract price less 1.50%, and any settlement for default shall be calculated on that basis. If any allowance becomes due under this clause, the contract price shall be deemed to be the original contract price less the allowance and any other contractual differences shall be settled on the basis of such reduced price.

10. **APPROPRIATION-**

- (a) Notice of appropriation shall state the vessel's name, the approximate weight shipped, and the date or the presumed date of the bill of lading.

- (b) The notice of appropriation shall within 10 consecutive days, (or if shipped from a Moroccan port 7 consecutive days), from the date of the bill(s) of lading be served by or on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers named in the contract. The Non-Business Days Clause shall not apply.

- (c) Notice of appropriation shall, within the period stated in sub-clause (b) be served by or on behalf of subsequent Sellers on their Buyers or on the Selling Agent or Brokers named in the contract, but if notice of appropriation is received by subsequent Sellers on the last day or after the period stated in sub-clause (b) from the date of the bill of lading, their notice of appropriation shall be deemed to be in time if served: -

- (1) On the same calendar day, if received not later than 1600 hours on any business day, or

- (2) Not later than 1600 hours on the next business day, if received after 1600 hours on a non-business day.

- (d) A notice of appropriation served on a Selling Agent or Brokers named in the contract shall be considered an appropriation served on Buyers. A Selling Agent or Brokers receiving a notice of appropriation shall serve like notice of appropriation in accordance with the provisions of this clause. Where the Shipper or subsequent Sellers serves the notice of appropriation on the Selling Agent, such Selling Agent may serve notice of appropriation either direct to the Buyers or to the Brokers.

- (e) The bill of lading date stated in the notice of appropriation shall be for information only and shall not be binding, but in fixing the period laid down by this clause for serving notices of appropriation the actual date of the bill of lading shall prevail.

- (f) Every notice of appropriation shall be open to correction of any errors occurring in transmission, provided that the sender is not responsible for such errors, and for any previous error in transmission which has been repeated in good faith.

- (g) Should the vessel arrive before receipt of the appropriation and any extra expenses is incurred thereby, such expenses shall be borne by Sellers.

- (h) When a valid notice of appropriation has been received by Buyers, it shall not be withdrawn except with their consent.

- (i) In the event of less than 95 tonnes being tendered by any one vessel Buyers shall be entitled to refund of any proved extra expenses for sampling, analysis and lighterage incurred thereby at port of discharge.



117  
118 **11. PAYMENT-**

- 119 (a) **Payment** ..... % of invoice amount by cash in .....  
120 in exchange for and on presentation of shipping documents.  
121 (b) **Shipping documents** – shall consist of - 1. Invoice. 2. Full set(s) of on board Bill(s) of Lading and/or Ship's Delivery  
122 Order(s) and/or other Delivery Order(s) in negotiable and transferable form. Such other Delivery Order(s) if required by  
123 Buyers, to be countersigned by the Shipowners, their Agents or a recognised bank. 3. Policy (ies) and/or Insurance  
124 Certificate(s) and/or Letter(s) of Insurance in the currency of the contract. The Letter(s) of Insurance to be certified by a  
125 recognised bank if required by Buyers. 4. Other documents as called for under the contract. Buyers agree to accept  
126 documents containing the Chamber of Shipping War Deviation Clause and/or other recognised official War Risk Clause.  
127 (c) In the event of shipping documents not being available when called for by Buyers, or on arrival of the vessel at destination,  
128 Sellers shall provide other documents or an indemnity entitling Buyers to obtain delivery of the goods and payment shall be  
129 made by Buyers in exchange for same, but such payment shall not prejudice Buyers' rights under the contract when shipping  
130 documents are eventually available.  
131 (d) Should Sellers fail to present shipping documents or other documents or an indemnity entitling Buyers to take delivery,  
132 Buyers shall take delivery under an indemnity provided by themselves and shall pay for the other documents when presented.  
133 Any reasonable extra expenses, including the costs of such indemnity or extra charges incurred by reason of the failure of  
134 Sellers to provide such documents, shall be borne by Sellers, but such payment shall not prejudice Buyers' rights under the  
135 contract when shipping documents are eventually available.  
136 (e) Should shipping documents be presented with an incomplete set of bill(s) of lading or should other shipping documents be  
137 missing, payment shall be made provided that delivery of such missing documents is guaranteed, such guarantee to be  
138 countersigned, if required by Buyers, by a recognised bank.  
139 (f) Costs of collection shall be for account of Sellers, but if Buyers demand presentation only through a bank of their choice, in  
140 that event any additional collection costs shall be borne by Buyers.  
141 (g) No obvious clerical error in the documents shall entitle Buyers to reject them or delay payment, but Sellers shall be  
142 responsible for all loss or expense caused to Buyers by reason of such error and Sellers shall on request furnish an approved  
143 guarantee in respect thereto.  
144 (h) Amounts payable under this contract shall be settled without delay. If not so settled, either party may notify the other that a  
145 dispute has arisen and serve a notice stating his intention to refer the dispute to arbitration in accordance with the Arbitration  
146 Rules.  
147 (i) **Interest** – If there has been unreasonable delay in any payment, interest appropriate to the currency involved shall be  
148 charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which shall be settled by arbitration.  
149 Otherwise interest shall be payable only where specifically provided in the terms of the contract or by an award of arbitration.  
150 The terms of this clause do not override the parties' contractual obligation under sub-clause (a).  
151

152 **12. INSURANCE-** Sellers shall provide insurance on terms not less favourable than those set out hereunder, and as set out in detail in  
153 GAFTA Insurance Terms No.72 viz:-

154 (a) **Risks Covered:** -

- |  |                        |
|--|------------------------|
| 155 Cargo Clauses (WA) with average payable, with 3% franchise or better terms | - Section 2 of Form 72 |
| 156 War Clauses (Cargo)  | - Section 4 of Form 72 |
| 157 Strikes, Riots and Civil Commotions Clauses (Cargo)                        | - Section 5 of Form 72 |

158 (b) **Insurers** - The insurance to be effected with first class underwriters and/or companies who are domiciled or carrying on  
159 business in the United Kingdom or who, for the purpose of any legal proceedings, accept a British domicile and provide an address  
160 for service of process in London, but for whose solvency Sellers shall not be responsible.

161 (c) **Insurable Value** - Insured amount to be for not less than 2% over the invoice amount, including freight when freight is payable  
162 on shipment or due in any event, ship and/or cargo lost or not lost, and including the amount of any War Risk premium payable by  
163 Buyers.

164 (d) **Freight Contingency** - When freight is payable on arrival or on right and true delivery of the goods and the insurance does not  
165 include the freight, Sellers shall effect insurance upon similar terms, such insurance to attach only as such freight becomes  
166 payable, for the amount of the freight plus 2%, until the termination of the risk as provided in the above mentioned clauses, and  
167 shall undertake that their policies are so worded that in the case of a particular or general average claim the Buyers shall be put in  
168 the same position as if the C.I.F. value plus 2% were insured from the time of shipment.

169 (e) **Certificates/Policies** - Sellers shall give all policies and/or certificates and/or letters of insurance provided for in this contract,  
170 (duly stamped if applicable) for original and increased value (if any) for the value stipulated in (c) above. In the event of a  
171 certificate of insurance being supplied, it is agreed that such certificate shall be exchanged by Sellers for a policy if and when  
172 required and such certificate shall state on its face that it is so exchangeable. If required by Buyers, letter(s) of insurance shall be  
173 guaranteed by a recognised bank, or by any other guarantor who is acceptable to Buyers.

174 (f) **Total Loss** - In the event of total or constructive total loss, or where the amount of the insurance becomes payable in full, the  
175 insured amount in excess of 2% over the invoice amount shall be for Sellers' account and the party in possession of the policy (ies)  
176 shall collect the amount of insurance and shall thereupon settle with the other party on that basis.

177 (g) **Currency of Claims** - Claims to be paid in the currency of the contract.

178 (h) **War and Strike Risks Premiums** – Any premium in excess of 0.50% to be for account of Buyers. The rate of such insurance  
179 not to exceed the rate ruling in London at time of shipment or date of vessel's sailing whichever may be adopted by underwriters.  
180 Such excess premium shall be claimed from Buyers, wherever possible, with the Provisional Invoice, but in no case later than the  
181 date of vessel's arrival, or not later than 7 consecutive days after the rate has been agreed with underwriters, whichever may be the  
182 later, otherwise such claim shall be void unless, in the opinion of Arbitrators, the delay is justifiable. Sellers' obligation to provide  
183 War Risk Insurance shall be limited to the terms and conditions in force and generally obtainable in London at time of shipment.

- 184 (i) Where Sellers are responsible for allowances or other payments to Buyers under Rye Terms or other contractual terms, (and  
185 which risks are also covered by the insurance provided by Sellers), the Buyers, on receipt of settlement, shall immediately return to  
186 Sellers the insurance documents originally received from them and shall, if required, subrogate to Sellers all right of claim against  
187 the Insurers in respect of such matters.  
188
- 189 **13. DUTIES, TAXES, LEVIES, ETC.** – All export duties, taxes, levies, etc., present or future, in country of origin, shall be for  
190 Sellers' account. All import duties, taxes, levies, etc., present or future, in country of destination, shall be for Buyers' account.  
191
- 192 **14. DISCHARGE-** Ship to discharge according to the custom of the port. Ship to discharge at the rate of .....  
193  
194 If documents are tendered which do not provide for discharge as above, or contain contrary stipulations, Sellers to be responsible  
195 to Buyers for all extra expenses incurred thereby.  
196
- 197 **15. WEIGHING-** the terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this contract.  
198 Unless otherwise agreed, final settlement shall be made on the basis of gross delivered weights at time and place of discharge  
199 at Buyers' expense. If the place of destination is outside the port limits, Buyers agree to pay the extra expenses incurred by  
200 Sellers or their agents for weighing. No payment shall be made for increase in weight occasioned by water and/or oil during  
201 the voyage. If final at time and place of loading, as per GAFTA registered superintendents' certificate at Sellers' choice and  
202 expense, (in which case the Deficiency Clause will not apply).  
203
- 204 **16. DEFICIENCY-** any deficiency in the bill of lading weight shall be paid for by Sellers and any excess over bill of lading  
205 weight shall be paid for by Buyers at contract price.  
206
- 207 **17. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS-** the terms and conditions of GAFTA Sampling Rules  
208 No.124, are deemed to be incorporated into this contract. Samples shall be taken at the time of discharge on or before removal  
209 from the ship or quay, unless the parties agree that quality final at loading applies, in which event samples shall be taken at  
210 time and place of loading. The parties shall appoint superintendents, for the purposes of supervision and sampling of the  
211 goods, from the GAFTA Register of Superintendents. Unless otherwise agreed, analysts shall be appointed from the GAFTA  
212 Register of Analysts.  
213
- 214 **18. PROHIBITION-** In case of prohibition of export, blockade or hostilities or in case of any executive or legislative act done by or  
215 on behalf of the government of the country of origin or of the territory where the port or ports of shipment named herein is/are  
216 situate, restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this  
217 contract and to the extent of such total or partial restriction to prevent fulfilment whether by shipment or by any other means  
218 whatsoever and to that extent this contract or any unfulfilled portion thereof shall be cancelled. Sellers shall advise Buyers without  
219 delay with the reasons therefor and, if required, Sellers must produce proof to justify the cancellation.  
220
- 221 **19. LOADING STRIKE-**  
222 (a) Should shipment of the goods or any part thereof be prevented at any time during the last 28 days of guaranteed time of  
223 shipment or at any time during guaranteed contract period if such be less than 28 days, by reason of riots, strikes or lock-outs at  
224 port(s) of loading or elsewhere preventing the forwarding of the goods to such port or ports, then the Shipper shall be entitled at  
225 the termination of such riots, strikes or lock-outs to as much time, not exceeding 28 days, for shipment from such port or ports as  
226 was left for shipment under the contract prior to the outbreak of the riots, strikes or lock-outs, and in the event of the time left for  
227 shipment under the contract being 14 days or less, a minimum extension of 14 days shall be allowed. In the event of further riots,  
228 strikes or lock-outs occurring during the time by which the guaranteed time of shipment has been extended by reason of the  
229 provisions of the foregoing paragraph, the additional extension shall be limited to the actual duration of such further riots, strikes  
230 or lock-outs. In case of non-fulfilment under the above conditions the date of default shall be similarly deferred.  
231 (b). The Shipper shall serve notice naming the ports not later than 3 business days after the last day of guaranteed time of shipment  
232 if he intends to claim an extension of time for shipment, such notice shall limit the port(s) for shipment after expiry of contract  
233 period to those from which an extension is claimed.  
234 (c). If required by Buyers, Sellers must provide documentary evidence to establish any claim for extension under this clause.  
235
- 236 **20. NOTICES-** All notices required to be served on the parties pursuant to this contract shall be communicated rapidly in legible  
237 form. Methods of rapid communication for the purposes of this clause are defined and mutually recognised as: - either telex,  
238 or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other electronic means, always subject to the  
239 proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the  
240 case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal appointed pursuant to the Arbitration  
241 Clause, that the notice was actually transmitted to the addressee. In case of resales/repurchases all notices shall be served  
242 without delay by sellers on their respective buyers or vice versa and any notice received after 1600 hours on a business day  
243 shall be deemed to have been received on the business day following. A notice to the Brokers or Agent shall be deemed a  
244 notice under this contract.  
245
- 246 **21. NON-BUSINESS DAYS-** Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and  
247 any days, which GAFTA may declare as non-business days for specific purposes, shall be non-business days. Should the time  
248 limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be extended until the first  
249 business day thereafter. The period of shipment shall not be affected by this clause.  
250
- 251 **22. DEFAULT-** In default of fulfilment of contract by either party, the following provisions shall apply: -

(a) The party other than the defaulter shall, at their discretion have the right, after serving a notice on the defaulter to sell or purchase, as the case may be, against the defaulter, and such sale or purchase shall establish the default price.

(b) If either party be dissatisfied with such default price or if the right at (a) above is not exercised and damages cannot be mutually agreed, then the assessment of damages shall be settled by arbitration.

(c) The damages payable shall be based on, but not limited to, the difference between the contract price and either the default price established under (a) above or upon the actual or estimated value of the goods, on the date of default, established under (b) above.

(d) In no case shall damages include loss of profit on any sub-contracts made by the party defaulted against or others unless the Arbitrator(s) or Board of Appeal, having regard to special circumstances, shall in his/their sole and absolute discretion think fit.

(e) Damages, if any, shall be computed on the quantity appropriated if any but, if no such quantity has been appropriated then on the mean contract quantity, and any option available to either party shall be deemed to have been exercised accordingly in favour of the mean contract quantity.

(f) Default may be declared by Sellers at any time after expiry of the contract period, and the default date shall then be the first business day after the date of Sellers' advice to their Buyers. If default has not already been declared then (notwithstanding the provisions stated in the Appropriation Clause) if notice of appropriation has not been served by the 10th consecutive day after the last day for appropriation laid down in the contract, the Sellers shall be deemed to be in default, and the default date shall then be the first business day thereafter.

23. **INSOLVENCY-** If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or have a Bankruptcy Petition presented against him (any of which acts being hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or the Receiver, Administrator, Liquidator or other person representing the party committing the Act of Insolvency) that such notice was thus served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out at the market price ruling on the business day following the serving of the notice. If such notice has not been served, then the other party, on learning of the occurrence of the Act of Insolvency, shall have the option of declaring the contract closed out at either the market price on the first business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market price ruling on the first business day after the date when the Act of Insolvency occurred. In all cases the other party to the contract shall have the option of ascertaining the settlement price on the closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the re-purchase or re-sale price shall be the amount payable or receivable under this contract.

24. **CIRCLE-** Where Sellers re-purchase from their Buyers or from any subsequent Buyer the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same description, from the same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for shipment to the same port(s) of destination during the same period of shipment). Different currencies shall not invalidate the circle. Subject to the terms of the Prohibition Clause in the contract, if the goods are not appropriated, or, having been appropriated documents are not presented, invoices based on the mean contract quantity shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days after the last day for appropriation, or, should the circle not be ascertained before the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained. Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by the market price on the first day for contractual shipment and invoices shall be settled between each Buyer and his Seller in the circle by payment of the differences between the market price and the relative contract price in currency of the contract. All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been ascertained in accordance with this clause same shall be binding on all parties to the circle. As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract. Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between the closing out price and the contract price.

25. **DOMICILE-** This contract shall be deemed to have been made in England and to be performed in England, notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance with the laws of England. Except for the purpose of enforcing any award made in pursuance of the Arbitration Clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief, (save for obtaining security only for the claim or counter-claim), the exercise of the powers of the Court in relation to the arbitration proceedings and any dispute other than a dispute which shall fall within the jurisdiction of arbitrators or board of appeal of the Association pursuant to the Arbitration Clause of this contract. For the purpose of any legal proceedings each party shall be deemed to be ordinarily resident or carrying on business at the offices of The Grain and Feed Trade Association, (GAFTA), England, and any party residing or carrying on business in Scotland shall be held to have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of

proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade Association, together with the posting of a copy of such proceedings to his address outside England, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.

**26. ARBITRATION-**

(a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No 125, in the edition current at the date of this contract, such Rules are incorporated into and form part of this Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the application of such Rules.

(b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first have been heard and determined by the arbitrator(s) or a board of appeal, as the case may be, in accordance with the Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or board of appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any persons claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute or claim.

(c) Nothing contained under this Arbitration Clause shall prevent the parties from seeking to obtain security in respect of their claim or counterclaim via legal proceedings in any jurisdiction, provided such legal proceedings shall be limited to applying for and/or obtaining security for a claim or counterclaim, it being understood and agreed that the substantive merits of any dispute or claim shall be determined solely by arbitration in accordance with the GAFTA Arbitration Rules, No 125.

**27. INTERNATIONAL CONVENTIONS-**

The following shall not apply to this contract: -

(a) The Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967;

(b) The United Nations Convention on Contracts for the International Sale of Goods of 1980; and

(c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980.

(d) Incoterms.

(e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to this contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.

Sellers .....Buyers.....

Printed in England and issued by

**GAFTA**  
**(THE GRAIN AND FEED TRADE ASSOCIATION)**  
 GAFTA HOUSE, 6 CHAPEL PLACE, RIVINGTON ST, LONDON EC2A 3SH

## EXHIBIT 6

Noble v Yugtransitservis (7.23.08)(GAFTA Contract within Admiralty Jurisdiction)

1

87N6NOBL

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK  
2 -----X  
2

3 NOBLE RESOURCES,

3  
4 Plaintiff,

4  
5 v.

08 CV 3876(LAP)

5  
6 YUGTRANZITSERVIS and  
6 SILVERSTONE,

7  
7 Defendants.  
8  
8 -----X  
9

New York, N.Y.  
July 23, 2008  
9:45 a.m.

10  
10  
11 Before:

11  
12 HON. LORETTA A. PRESKA,

12  
13 District Judge  
13

14 APPEARANCES  
14

15 TISDALE LAW OFFICES, LLC  
15 Attorneys for Plaintiff  
16 BY: CLAUARISSE OROZCO  
16

17 CHALOS & CO.  
17 Attorneys for Defendants  
18 BY: GEORGE M. CHALOS  
18  
19  
20  
21  
22  
23  
24  
25

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(Case called; in open court)

1  
2  
3 THE COURT: Counsel have very graciously agreed to  
4 prepare their papers quickly so that the hearing required to be  
5 conducted quickly on a motion to vacate a maritime attachment  
6 could take place promptly. I am grateful to counsel for doing  
7 that.

8 Defendant argues first that the contract at issue is  
9 not subject to maritime jurisdiction. We all agree to the law  
10 which is that the threshold inquiry examines the subject matter  
11 of dispute as opposed to the underlying contract. To determine  
12 if an issue related to maritime interests has been raised, an  
13 issue will not give rise to maritime jurisdiction if the  
14 subject matter of the dispute is so attenuated from the



Noble v Yugtransitservis (7.23.08)(GAFTA Contract within Admiralty Jurisdiction)  
 15 business of maritime commerce that it does not implicate the  
 16 concerns underlying admiralty and maritime jurisdiction.

17 As the Court of Appeals acknowledged in *FolksAmerica*,  
 18 *Reinsurance Co. v. Cleanwater New York, Inc.*, 413 F.3d 307 (2d  
 19 Cir. 2005) the court directed that the jurisdictional inquiry  
 20 be focused upon whether the nature of the transaction was  
 21 maritime and observed that the fundamental interest giving rise  
 22 to maritime jurisdiction is the protection of maritime  
 23 commerce.

24 Here, the contract itself makes clear that maritime  
 25 transportation was integral to the agreement. For example, the  
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1 contract provided that Plaintiff Noble would purchase a cargo  
 2 from YTS and the contract set out in great detail the  
 3 conditions for transportation and delivery.

4 The contract set out in the portion under delivery the  
 5 window of dates open for loading in the specified port, that  
 6 portion of the contract also required that the vessel nominated  
 7 by buyers was required to tender her notice of readiness at the  
 8 designated port. It set out how the loading of the vessel was  
 9 to be effected. It set out in great detail the type of vessel  
 10 that would be acceptable, that is, "A self-trimming bulk  
 11 carrier, single-decker vessel suitable for direct loading  
 12 (wagon-board of the vessel)."

13 The Contract also provided that the vessel could be --  
 14 should be confirmed or rejected by sellers in writing and, in  
 15 fact, here the sellers rejected the first three vessels that  
 16 were nominated eventually accepting the Southgate.

17 The contract further set out the preadvise that buyers  
 18 were to give the sellers of the vessel's ETA, name, flag,  
 19 dimensions, hatches and hold dimensions and alike. It set out  
 20 in detail the loading instructions, the loading rate, detailed  
 21 the notice of readiness and the laytime and the demurrage,  
 22 among other provisions. So the underlying contract certainly  
 23 touched upon the business of maritime commerce.

24 In addition, the dispute between the parties also  
 25 touches upon the maritime commerce. As set out in plaintiff's  
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1 claim submissions in the arbitration, and perhaps more  
 2 importantly as reflected in the award, the dispute centered on  
 3 two issues. First, the default by YTS in failing to provide a  
 4 berth for the vessel after she had tendered her notice of  
 5 readiness and refusal to load the vessel constituting a default  
 6 under the contract. And, secondly, a request for wasted vessel  
 7 costs, that is, the costs incurred by the vessel following  
 8 tendering of her notice of readiness.

9 As set out in the award damages were awarded for both  
 10 these items and indeed there was a lengthy discussion in  
 11 Section 6 of the award about the wasted costs incurred on  
 12 account of the vessel's lack of use because of defendant YTS's  
 13 default. The wasted vessel expenses included bunkering costs,  
 14 port and survey costs, and hire payments, all clearly within  
 15 the maritime jurisdiction.

16 For all those reasons, I find that the contract and  
 17 dispute at issue fall within the Court's maritime jurisdiction.

18 The question has also been presented as to whether or  
 19 not the guarantee by Silverstone falls within the Court's

Noble v Yugtransitservis (7.23.08)(GAFTA Contract within Admiralty Jurisdiction)

20 maritime jurisdiction. As the Court has set out recently in C  
21 Transport Panamax, Ltd. v. Kremikovtzi Trade, et al., 07 CR 893  
22 (June 19, 2008 S.D.N.Y.) courts in this circuit and elsewhere  
23 have long held that an agreement to act as a surety on a  
24 maritime contract is not maritime in nature. They have  
25 recognized that the same is not true of an agreement to

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1 guarantee the performance of a maritime contract.

2 See e.g. Compagnie Francaise, DE Navigational Avapeur  
3 v. Bonnase, 19 F.2d 777, 779 (2d Cir. 1927) (L. Hand, J).

4 Here the guarantee by Silverstone specifically states  
5 "The guarantor (Silverstone) irrevocably and unconditionally,  
6 A, as principal obligor guarantees to the Buyers the prompt  
7 performance by (YTS) of all its obligations under the  
8 Contract..." Accordingly, the guarantee at issue here based  
9 on longstanding Second Circuit law falls within the meaning of  
10 maritime contracts.

11 Finally, with respect to defendant's argument that the  
12 matter is not ripe, the arbitral award has ordered that the  
13 payment be made and it has not yet been paid. Accordingly, the  
14 matter is ripe with respect to the guarantor. In addition, it  
15 is most frequently the case that Rule B attachments are used to  
16 provide security for arbitral awards and that has been the use  
17 here. Accordingly, defendants' motion to vacate the attachment  
18 is denied.

19 THE COURT: Is there anything else today?

20 MR. CHALOS: Yes, your Honor, two points if I may.

21 THE COURT: Sir.

22 MR. CHALOS: We thank the Court for hearing us on an  
23 expedited basis. We would first off like to make an  
24 application to the Court to reduce the amount of security. On  
25 page 14 of the award, the panel clearly sets forth that the

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1 plaintiff was awarded \$3,362,400 and no more as the words of  
2 the panel. Here the amount of the order attachment is almost  
3 double that. It is significantly more.

4 THE COURT: What is the story with the interest,  
5 Mr. Chalos?

6 MR. CHALOS: According to the panel, it is 7.5 percent  
7 beginning August 16, 2007. That is only one year's worth of  
8 interest. Surely this can be resolved in the next, I would  
9 assume, six months or so with the upcoming appellate deadlines.

10 THE COURT: Has anyone done the calculation of the  
11 interest?

12 MS. OROZCO: I have, your Honor. But I would just  
13 like to speak on that point. The panel awards the amount less  
14 than we had sought in our application, but it also awards  
15 interest 7.5 percent from the date of the default until it is  
16 paid and it also awards costs of arbitrator, not legal costs.

17 We have attached to date as outlined in my declaration  
18 \$4 million. It is paragraph 34 of my declaration at page 6.  
19 We have not calculated the interest out for a year. What we  
20 have done is calculated it out for three years, which is  
21 normally what we undertake in anticipating appeals and that  
22 sort of thing. If we allow for three years of interest,  
23 security for three years of interest, plus the costs of the  
24 Gafta arbitration, the security that we would be entitled to

Noble v Yugtranszitservis (7.23.08)(GAFTA Contract within Admiralty Jurisdiction)  
 25 would be \$4,225,000.

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1 So we are at this time undersecured by 200,000.  
 2 However, if the Court wants us to reevaluate the interest, we  
 3 would be willing to do so and then release the funds  
 4 accordingly if that was a proper analysis.

5 THE COURT: Counsel.

6 MR. CHALOS: Those calculations are flawed. Those  
 7 calculations are based on the principal claim of 3.9 million.  
 8 That is not what the panel awarded. 7.5 percent on the \$3.3  
 9 million award is about, 21 to \$210,000.

10 MS. OROZCO: I actually calculated the three-year  
 11 interest on the amount awarded by the arbitrators, which was  
 12 \$3,362,400. And the interest from August 15th, 2007 through  
 13 August 15th, 2010 is \$840,000.

14 MR. CHALOS: I submit through 2010 is a bit long. I  
 15 can certainly understand maybe two years, but not three.

16 Also, seeing as they are already secured from the  
 17 guarantor's EFTs, I renew my application and dismiss the matter  
 18 against YTS. They are secured or they are not secured. They  
 19 have it already attached. There is no in rem quasi  
 20 jurisdiction over the party whose funds who haven't been  
 21 attached.

22 THE COURT: I don't hear counsel going out and seeking  
 23 further attachments here.

24 MR. CHALOS: But they would, though. That is the  
 25 point if they sought to move money. In fact, in the papers

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1 that counsel submitted last night, they said exactly that they  
 2 would do that. If they wound up -- U.S. dollar transfers on  
 3 behalf of Yugtranszitservis came through New York, they would  
 4 catch that and release monies belonging to the guarantor.

5 THE COURT: What do you say to that, counsel?

6 MS. OROZCO: Was that was a statement that we made.  
 7 That statement as made with respect to the application of the  
 8 New York CPLR in that case, which we didn't address and we say  
 9 we are not applied. We actually have stopped serving the writ  
 10 of attachment in this case and we are no longer serving on any  
 11 of the defendants.

12 THE COURT: First, I decline to reduce the amount.

13 Second, obviously counsel knows that plaintiff may not  
 14 be oversecured. If, Mr. Chalos, you find that plaintiff is  
 15 attaching more than the four million two number -- is that the  
 16 total number? Please remind me.

17 MS. OROZCO: Yes. The total number is comprised of  
 18 \$3,362,400 of principal pursuant to the arbitration award  
 19 issued on July 4th, 2008, with the rate of interest calculated  
 20 at 7.5 percent which is also the rate awarded for three years  
 21 from August 15th, 2007 through August 15th, 2010. The interest  
 22 on that amount is \$840,501.

23 In addition, the arbitration award also allowed costs,  
 24 Gafta costs, to the plaintiff and the Gafta costs incurred were  
 25 23,000 U.S. dollars. So the total security we would be

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Noble v Yugtransitservis (7.23.08)(GAFTA Contract within Admiralty Jurisdiction)  
 1 entitled to or we would be seeking is \$4,225,901.

2 THE COURT: To the extent, Mr. Chalos, counsel  
 3 attaches more than that, you let me know.

4 MR. CHALOS: Thank you, your Honor.

5 Finally, your Honor, we would like to ask the Court to  
 6 certify this for immediate appeal to the Second Circuit.

7 THE COURT: I will take a letter on that.

8 How is this a complex or novel issue?

9 MR. CHALOS: well, it is a novel issue in the sense  
 10 that the Court has for the first time found a Gafta contract to  
 11 be within the meaning of a maritime contract and a maritime  
 12 claim under Rule B. It stands starkly in contrast to Judge  
 13 Daniels' decision as to Aston Agro as well as Judge Sullivan, I  
 14 am not sure about that, in the Tan Shan case. These exact  
 15 arguments were presented there with a 180-degree different  
 16 result and I do believe that if we can bring this to a head  
 17 Second Circuit level promptly that would help provide some  
 18 clarity on these types of issues.

19 THE COURT: The law is not in doubt. It is the  
 20 application, right?

21 MR. CHALOS: well, I think the law is in doubt in a  
 22 sense that our position is that the Court needs to look to the  
 23 primarily objective of the contract. Our argument has been  
 24 that the primary objective of the contract is one of sale and  
 25 purchase.

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1 THE COURT: I didn't see any of the Second Circuit  
 2 cases talking about the primary objective of the contract.  
 3 MR. CHALOS: well, I think we set out the argument  
 4 based on the precedent of Judge Daniels' decision, which can be  
 5 found for the Court's reference on page 3 of the Aston Agro  
 6 decision where he writes, In this case the contracts are not  
 7 maritime contracts because they are primary objective was not  
 8 the transportation of goods by sea. Instead, their primary  
 9 objective was undoubtedly the sale of wheat. That the wheat  
 10 was transported on a ship does not make the contracts maritime  
 11 contracts anymore than it would make them aviation contracts  
 12 had the wheat been shipped via airplane. Nor would the  
 13 contracts between a seller and shipper -- that is true here.  
 14 the judge in that matter goes on to write, Nor can maritime  
 15 jurisdiction be exercised under an exception to the general  
 16 rule that maritime jurisdiction "Arises only when the subject  
 17 matter of the contract is purely or wholly maritime in nature.  
 18 Under the first exception, federal court can exercise --

19 THE COURT: Counsel, do you want this taken down? If  
 20 you do, you better read so the court reporter can take it down.

21 MR. CHALOS: The Court has it before it.

22 THE COURT: So you don't need to read it.

23 MS. OROZCO: May I respond?

24 THE COURT: Yes, ma'am.

25 MS. OROZCO: The key to the quotes by defendant from

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1 the Ashon Agro case is the first line where it says, "In this  
 2 case." and further or in the quote Judge Daniels says that  
 3 based on the facts of that particular case they are not within  
 4 the maritime jurisdiction.

5 I would just like to point out that the Exxon case,

Noble v Yugtransitservis (7.23.08)(GAFTA Contract within Admiralty Jurisdiction)  
 6 500 U.S. 603, 612 reminds us -- this is the U.S. Supreme  
 7 Court -- reminds us that courts are required to look to the  
 8 subject matter of the relevant contract. And in this case the  
 9 relevant contract, the Noble YTS contract, provides maritime  
 10 jurisdiction.

11 MR. CHALOS: Your Honor, this is the shifting sands  
 12 that I have been arguing again. The Court is required to look  
 13 to the nature of the contract, not the dispute. Twenty minutes  
 14 ago counsel was arguing the Court needs to look to the dispute  
 15 and I rejected that. The contract is a sale and purchase  
 16 contract, not a maritime contract. It is not maritime contract  
 17 with third parties. We had nothing do with it. My clients had  
 18 nothing to do with it. That is the dispute here. If you look  
 19 to the nature and substance of the contract, we are selling and  
 20 they are buying. Full stop. It is the sale and purchase  
 21 contract.

22 In fact, your Honor, that was precisely what was  
 23 addressed by Judge Daniels. He writes here invoking the first  
 24 exception, Aston contends that maritime jurisdiction exists  
 25 because the particular claims at issue involve only the

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1 maritime portions of the contracts, and it was rejected, which  
 2 is precisely the argument presented by plaintiff. Our  
 3 opposition is precisely the argument adopted by Judge Daniels.

4 THE COURT: The Court denies the request for  
 5 certification under 28, U.S.C., Section 1292(b). The  
 6 controlling law is not at all at issue in this case. Everyone  
 7 agrees on the cases that should be looked to for guidance. The  
 8 only dispute is the application of those cases to the facts of  
 9 this case as opposed to the facts of other cases. Accordingly  
 10 certification for immediate appeal is denied.

11 Anything else, counsel?

12 MR. CHALOS: Nothing further, your Honor.

13 THE COURT: Thank you, ladies and gentlemen. Thank  
 14 you for your excellent arguments.

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## EXHIBIT 7



Noble v Sarl Ouest (Oral Argument & Decision)(Judge Lynch)

1

88C9NOBA

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK  
2 -----X  
2

3 NOBLE RESOURCES SA,  
3

4 Plaintiff,  
4

5 v.  
5

08 CV 3587 (GEL)

6 SARL OUEST IMPORT,  
6

7 Defendant.  
7

8 -----X  
8

New York, N.Y.  
August 12, 2008  
10:15 a.m.

10 Before:  
10

11 HON. GERARD E. LYNCH,  
11

District Judge  
12

13 APPEARANCES  
13

14 TISDALE LAW OFFICES, LLC  
15 Attorney for Plaintiff  
15 BY: CLAUROSSE OROZCO  
16

16 CICHANOWICZ, CALLAN, KEANE, VENGROW & TEXTOR, LLP  
17 Attorney for Defendant  
17 BY: JOSEPH F. DeMAY, JR.  
18

19  
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25 SOUTHERN DISTRICT REPORTERS, P.C.  
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88C9NOBA

(Case called)

1 MS. OROZCO: Good morning, your Honor. Claurisse  
2 Orozco from Tisdale Law Offices for the plaintiff, Noble  
3 Resources.  
4

5 THE COURT: Good morning.

6 MR. DeMAY: Good morning. Joseph DeMay, Jr. from  
7 Cichanowicz, Callan, Keane, Vengrow & Textor for the defendant.

8 THE COURT: Mr. DeMay, good morning.

9 well, I think that what is technically before me is a  
10 request for a hearing on a potential motion to vacate an order  
11 for marine attachment. The parties have written a number of  
12 letters to the court regarding that. It's my impression -- and  
13 I think it's been confirmed by my law clerk -- that the parties  
14 have fully briefed the merits of the issue and that what we're

Page 1

15 Noble v Sarl Ouest (Oral Argument & Decision)(Judge Lynch)  
 16 really here to do today is to have oral argument towards  
 17 deciding the motion to vacate the attachment.  
 18 Is that everybody's understanding, or does anybody  
 19 think we need more of anything?  
 20 MS. OROZCO: No. That's my understanding, your Honor.  
 21 MR. DeMAY: Oral argument, your Honor.  
 22 THE COURT: Very good.  
 23 So, I think what I'd really like to hear -- I suppose  
 24 starting with the defendant as the movant -- is an account from  
 25 each side of what they think is at issue in the arbitration in  
 this case; that is, what are the factual issues and legal  
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 1 issues that the arbitrators had to decide.  
 2 Mr. DeMay.  
 3 MR. DeMAY: Your Honor, I'll confess that I was not  
 4 fully briefed on the arbitral aspect of it. Our application  
 5 and our retention as attorneys was directed solely toward the  
 6 propriety of the maritime attachment. For that purpose, we  
 7 have assumed, for argument's sake only, the validity of the  
 8 arbitration award, and the accurate and true condition of the  
 9 contracts of sale that the plaintiff has already provided.  
 10 THE COURT: Yes. I'm not so much concerned with the  
 11 merits of the arbitration. But, as I understood it, your  
 12 argument is that this is really not a maritime case.  
 13 MR. DeMAY: Yes, your Honor.  
 14 THE COURT: And on reading the arbitration award, it  
 15 seemed to me that what the arbitrators were concerned with was  
 16 what, as a nonadmiralty lawyer you'll forgive me for calling,  
 17 boaty things; assumed to be about what happened to the ship and  
 18 why it was late and things of that sort.  
 19 And I wanted to give everyone a chance to address that  
 20 in case I misperceived what was the -- what is the real dispute  
 21 between the parties because it sounded to me, in my landlubber  
 22 way, to be a maritime kind of dispute.  
 23 MR. DeMAY: Your Honor, my understanding is that what  
 24 we're talking about here are essentially pricing terms. The  
 25 sales contract were just that. They were contracts for the  
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 1 sale of sugar.  
 2 Under like the contracts in Judge Preska's case, which  
 3 has already been provided to you, these particular contracts  
 4 made reference to the ship.  
 5 They made reference to the fact that the buyer, our  
 6 client, would be responsible for certain discharging costs, and  
 7 they provided references to the charter party by which those  
 8 costs would be calculated.  
 9 My understanding, however, is that unlike the typical  
 10 maritime case, our client did not assume any direct obligation  
 11 toward the operation or navigation of the ship. In other  
 12 words, the contract for the sale of the sugar made reference to  
 13 the operation of the ship, made reference to things like  
 14 demurrage. But I think the case law is fairly clear that  
 15 simply making reference to those things do not give rise to a  
 16 maritime obligation. The maritime obligation arises when you  
 17 assume an obligation that directly relates to the operation and  
 18 navigation of a ship in commerce on the high seas.  
 19 THE COURT: Well, I mean it seems to me that there  
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20 Noble v Sarl Ouest (Oral Argument & Decision)(Judge Lynch)  
 21 are, as I've understood the case law, two different kinds of  
 22 ways in which a contract can give rise to admiralty  
 23 jurisdiction. The one is, as you say, where the contract  
 24 itself is predominantly about maritime issues. And I'd have to  
 25 agree with you, this looks more like, for example, the case  
 that I have that the parties cited in that it's really a

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1 contract for the sale of goods that says: well, but by the  
 2 way, it's going to be going by ship.  
 3 But then there is a separate issue where the claim at  
 4 issue arises from a breach of the maritime obligations that are  
 5 part of the contract. And it seemed to me that what the  
 6 parties were actually fighting about here was the maritime part  
 7 of the contract. In other words, they were concerned about  
 8 what the demurrage costs were going to be based on what  
 9 happened at sea.

10 Am I wrong about that?

11 MR. DeMAY: No, your Honor. To the extent that this  
 12 is a demurrage claim, that's absolutely correct. And the  
 13 contract does make provision for our client to reimburse the  
 14 seller for all demurrage costs that they incur.

15 But demurrage is primarily an obligation that's  
 16 incurred by the charterer, in this case the seller, to the  
 17 vessel owner. Our client, the buyer, is neither the charterer  
 18 nor the vessel owner.

19 What they did, in effect, was to say that: we, the  
 20 buyer, will indemnify or compensate you, the seller, for  
 21 whatever demurrage costs that you incur during the performance  
 22 of the charter party.

23 And think the case law is clear that unlike a  
 24 situation where somebody, say a guarantor, assumes the direct  
 25 performance and obligation to the vessel owner, where you

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1 merely take or undertake to indemnify or compensate somebody  
 2 for a maritime obligation that they have incurred, that  
 3 obligation to pay, to indemnify, is not itself a maritime  
 4 obligation.

5 It is inevitable if you've undertaken to compensate or  
 6 indemnify somebody for a maritime obligation that the dispute  
 7 will necessarily center on the details of that maritime  
 8 obligation. But, here the maritime obligation was not our  
 9 client's maritime obligation. It was first and foremost the  
 10 seller/charterer's obligation, and our client was merely called  
 11 upon to indemnify, which meant that inevitably that the details  
 12 of the charter party of the performance would have to be  
 13 raised. But that's not the same thing as saying that our  
 14 client undertook a maritime obligation, undertook to compensate  
 15 the charterer for its maritime obligations.

16 THE COURT: I see. So you're saying even if the  
 17 dispute was in substance about the facts of what occurred at  
 18 sea, that your obligation here was purely to pay whatever the  
 19 chartering party had to pay in demurrage costs?

20 MR. DeMAY: Exactly. The contract for sale set out  
 21 the way in which that compensation would be calculated. But  
 22 that is essentially the case.

23 THE COURT: Again, when you say the contract for sale  
 24 set out the way in which it would be calculated, what did the

25 Noble v Sarl Ouest (Oral Argument & Decision)(Judge Lynch)  
contract of sale say?

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1 Again, it seems to me that your argument works best if  
2 the contract simply says whatever the -- am I using the right  
3 terminology -- the chartering party has to pay in demurrage  
4 costs, you will reimburse, not us. And we don't care  
5 whether -- what the rights and wrongs are of that charge.  
6 whatever he gets charged, you will pay.

7 And in that event, you would not have a dispute about  
8 whether the charges were correct or about anything maritime at  
9 all. It would simply be: Here's the bill that we were  
10 presented and you better pay it.

11 MR. DeMAY: That would be the cleanest way of doing  
12 it. But in commerce, it is not unusual that the parties  
13 bargained for whatever advantage they can get. And it was  
14 certainly open to the parties in this case, in our case the  
15 buyer, to negotiate with the seller that, yes, it would be  
16 responsible for demurrage but only within certain parameters  
17 and on certain conditions.

18 So that the mere fact that they tried to cut  
19 themselves a better deal than the seller/charterer might have  
20 had with the vessel owner, I don't think changes the essential  
21 fact that they're not assuming a maritime obligation. They are  
22 assuming a payment obligation.

23 THE COURT: But the obligation then is very similar to  
24 the payment obligation that would occur if the contract simply  
25 said we're responsible for getting the ship to port and if you

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1 don't get there you pay demurrage, right?

2 I mean it winds up being the same thing. Once you  
3 incorporate the maritime issues into what has to be paid,  
4 you're essentially talking about a very maritime kind of set of  
5 issues, aren't you?

6 MR. DeMAY: Yes. The issues can be maritime. I don't  
7 think that's determinative.

8 THE COURT: I see.

9 MR. DeMAY: The question is: Are the obligations  
10 maritime? And, of course, if, as I said before, you're talking  
11 about having the buyer, having to compensate the seller, for  
12 money incurred in the performance of maritime obligations,  
13 unless the seller has somehow undertaken to directly assume an  
14 obligation to the shipowner, I don't see that it's a maritime  
15 obligation; it's simply a payment obligation that has reference  
16 to maritime issues.

17 THE COURT: I see. And that further explains why you  
18 would take the position that I really shouldn't worry very much  
19 about what the arbitrators had to do? I should just look at  
20 the contract itself to decide what the nature of the obligation  
21 is that the parties are disputing?

22 MR. DeMAY: Yes, your Honor.

23 THE COURT: Okay. That's very helpful. Thank you.

24 MS. Orozco, what's your view?

25 MS. OROZCO: well, clearly, I disagree with Mr. DeMay.

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 I think that the dispute here is clearly a maritime dispute.  
 And I think that the case law requires us and directs us to  
 look at the nature of the dispute of this particular contract.  
 That's what the Second Circuit has directed in Folksamerica.

And I believe that the very dispute in this case,  
 which is admitted by both parties, is identified in the  
 arbitration award. And I think that the arbitration award is  
 important because it outlines and indicates what the parties'  
 understandings were and what their rights and obligations were  
 under the contract. So, I think that the arbitration is  
 important.

But before getting to the arbitration award, the  
 contract itself has very specific maritime provisions. Each of  
 the six contracts are generally the same. The only differences  
 being the date, the quantity of goods to be shipped, and the  
 vessels.

THE COURT: Can you point me to where in the  
 voluminous materials I will most easily find the contracts so I  
 can follow?

MS. OROZCO: They are -- to my letter dated July 8,  
 they are Exhibits 1 through 6. They are all generally the  
 same.

THE COURT: Okay. Got it.

MS. OROZCO: If you go to the fourth page of the  
 contract under discharging conditions --

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THE COURT: Okay.

MS. OROZCO: -- it specifically identifies and  
 specifically states that all of the discharging costs are for  
 the buyer's account, in this case the defendant.

So, there is no secret or no hidden agenda. It's  
 basically any discharging costs, discharging, port expenses,  
 demurrage incurred, any other vessel-related costs that would  
 be incurred are for the buyer's account.

More importantly, in this particular contract -- each  
 contract identifies the vessel, as well. So, the buyer's  
 already aware of the discharging terms, the conditions, the  
 payments they are going to incur, the vessel that is going to  
 be nominated, And I think what's very important is the very  
 last sentence says, "All of the other conditions to be in  
 accordance with the amended version of the Sugar Charter Party  
 Form 1999."

The arbitrators, when they were reviewing their award,  
 made a note at page 4 of the arbitration award, which is your  
 Exhibit 7, in paragraph 6. They stated and they recognized  
 that at the oral argument hearing during the arbitration both  
 parties agreed in accordance with clause 22 of the standard  
 sugar charter party 1999, which was incorporated into each of  
 the six contracts, gross weight, rather than net weight, was  
 relevant.

This statement was made for the purposes of  
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calculating the demurrage rate. But what's, I find -- I think  
 is very important in this particular case is that the charter  
 parties were incorporated. And to the extent that the  
 discharging conditions in the standard form were different than  
 this particular contract, this particular contract would

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govern. But otherwise, all of the standard terms of the sugar  
charter party were incorporated.

In addition --

THE COURT: So, looking back at the contract for a  
moment, the contract doesn't, in your view, simply say that  
there's going to be reimbursement of costs; instead, you're  
saying that the contract provides specifically for terms about,  
for example, how the vessel is going to be discharged?

MS. OROZCO: Yes.

THE COURT: And those are provisions between these  
parties, not involving the shipowner. They are between these  
parties. And they are agreeing as to how the vessel is going  
to be discharged and what -- when lay time is going to count  
and when it's not going to count; and how the demurrage is  
going to be settled; and what the water draft is at the port of  
discharge. These are all obligations that the buyer is  
guaranteeing, not something that the buyer is just going to pay  
costs that somebody else incurs?

MS. OROZCO: Yes. I believe -- my position would be,  
your Honor, that this is not at all an indemnity provision. If

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it was an indemnity provision, I think it would say it was an  
indemnity provision.

In the case of Aston Agro v. Star Grain, which the  
defendant had cited in one of their letters, which is a case of  
Judge Daniels, it was a sales contract, and I believe it was  
for the sale of wheat, I don't recall off the top of my head.

But, in that particular case, the issue before the  
court and what the court stated was with respect to the  
demurrage obligations in that case, it was not clear under the  
contract which party would pay for or incur demurrage.

In that case, Judge Daniels found that it may very  
well just have been an indemnity provision. But the demurrage  
clause in that contract just said demurrage to be calculated in  
accordance with the charter party. So at the time of entering  
into the contracts in this case, the defendant was very much  
aware that it was obligating itself to pay demurrage.

In addition, the arbitration decision --

THE COURT: Now, again, just to go back to this.

MS. OROZCO: Yes.

THE COURT: I cited a moment ago various provisions in  
the contract that seemed to be of a maritime nature, but it's  
not clear to me -- I suspect it's the other way -- it's not  
clear to me that those were -- the ones I cited are the -- what  
the dispute was about. No one was fighting about whether there  
was lay time on a Thursday afternoon, I take it.

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So, what exactly -- well maybe they were. There's a  
lay time allowance being calculated. There is an effective  
demurrage -- on demurrage of rain periods during the discharge.

What contract provisions do those disputes fall under?

MS. OROZCO: Those disputes fall under the discharge  
conditions. And to the extent that they are not outlined  
within the discharging conditions of the particular contracts,  
then the sugar charter party form would come into play.

And at page 2 of the arbitration award in the overview  
paragraph, it's clearly stated that Noble, the plaintiff in



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 this case, their claims are for demurrage which were incurred.  
 And Ouest Import, the defendant, admitted that the demurrage  
 costs were incurred. But, the dispute was the defendant had  
 counterclaims for dead freight and for dispatch -- I'm sorry,  
 not dead freight -- dispatch and discharge port fines.

So, it wasn't a question of: Do we owe demurrage or  
 not? It was a question of how demurrage is calculated, and how  
 do we treat lay time periods, how do we treat rain delays, how  
 do we treat lack of bills of lading at the discharge port.  
 Those were the disputes.

Just two more important points. If it was an  
 indemnity contract, perhaps the issue would be: You paid the  
 charterer -- Noble, you paid the owner too much money and we  
 don't think we should indemnify you. But, it's not. It's a  
 dispute of how to calculate, when does lay time run.

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More importantly, on page 9 at paragraph 25 and page  
 10 at paragraph 27 in the arbitration award, the defendant in  
 this case relied on charter party case law in London to support  
 its positions. So I don't think that it's -- I think that the  
 parties were very much aware of the maritime nature of the  
 obligations with this particular dispute.

And I think that this case is very similar to the  
 Noble v. YTS case that I submitted to your Honor, recently  
 decided by Judge Preska. I think that these are clearly  
 maritime obligations.

THE COURT: Okay.

Mr. DeMay, any last words?

MR. DEMAY: Yes, your Honor.

Number one, I disagree that this case is on all fours  
 with Judge Preska's decision. If you look at Judge Preska's  
 decision, I think on the second page she outlines a number of  
 details that were present in those contracts that are not  
 present in these contracts.

Number two, I believe only four of the six contracts  
 actually named the vessel. Two of them do not.

Number three, I take issue with the notion that the  
 charter party was incorporated. What it says is that, "All of  
 the other conditions to be in accordance with the amended  
 version of the sugar charter party." And "conditions" in that  
 sense has to refer to the caption, which is discharge

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conditions.

So, once again, all the parties have done is to refer  
 to another document as a standard by which they determine their  
 own obligations.

The notion that the buyer guarantees the minimum water  
 draft, again, that's fine if the guarantee is being made  
 directly to the vessel owner, where it certainly then would be  
 a maritime obligation. But as between two businessmen, a buyer  
 and seller of sugar, that means something else. It simply  
 means that the buyer says: If the water draft is not 99 feet,  
 we'll compensate you for damages suffered as a result of that.  
 And the notion that if this were intended to be an indemnity  
 provision, they would have said so.

This is a businessman's contract. And I think it's  
 unreasonable to assume that businessmen would necessarily

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phrase their obligations as would an attorney.

THE COURT: I understand. I think I'm prepared to  
rule.

As I said, what's before the court is effectively a  
motion by the defendant to vacate an order for the process of  
maritime attachment. The underlying dispute concerns a series  
of agreements between the plaintiff and defendant for the sale  
of sugar. A dispute arose between the parties regarding the  
performance of those contracts, and following arbitration a  
panel awarded the plaintiff \$674,558 in outstanding demurrage  
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charges owed by the defendant.

The plaintiff then sought this order of maritime  
attachment in an attempt to satisfy that judgment which remains  
unsatisfied.

The defendant contests the existence of federal  
admiralty jurisdiction, which is of course a prerequisite to  
the applicability of the rules governing maritime attachments.

After hearing argument and reviewing the papers  
submitted by the parties, for the following reasons the court  
denies the defendant's motion to vacate the order for maritime  
attachment.

Traditionally, the rule was that a federal court could  
exercise admiralty jurisdiction only over "contracts, claims,  
and services, purely maritime," in nature. That's *Rea v. The  
Eclipse*, 135 U.S. 599, 608 (1890). However, that rule has  
loosened considerably and today mixed contracts, those  
containing both maritime and nonmaritime provisions, can be  
subject to admiralty jurisdiction in two situations. As set  
forth by the Second Circuit in *Folksamerica Reinsurance Company  
v. Clean Water of New York, Incorporated*, 413 F.3d 307, (Second  
Circuit 2005), those situations are, first, where "the  
principal objective of a contract is maritime commerce," and  
second, where the claim at issue in the dispute, "arises from a  
breach of maritime obligations that are severable from the  
nonmaritime obligations of the contract." And that quotation

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is from page 315 of the opinion.

It's clear that the first situation does not apply  
here. The contracts in this case deal primarily with the sale  
of goods. Each is styled as a "Confirmation of Sale." See  
Exhibits 1 to 6 of the plaintiff's letter of July 7, 2008.

Each of the contracts sets forth the standard terms  
one expects to see in a contract for a sale of goods, including  
a buyer, a seller, a price, quantity, and quality.

The contracts also set forth the terms of payment.

The contracts do, however, specify some details about  
shipment. Some indicate shipment dates and others the actual  
ships to be used. The contracts specify that "discharging  
costs" are to be borne by the buyer. See, for example, Exhibit  
1 to the plaintiff's letter of July 7, 2008.

But, the contracts are not themselves contracts for  
the carriage of goods and they clearly contemplate separate  
bills of lading to be negotiated between the seller and a third  
party carrier.

Materially similar contracts were found not to have  
maritime commerce as their principal objective in *Aston*

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 Agro-Industrial AG v. Star Grain Limited, 2006 U.S. District  
 Court, LEXIS 91636, (Southern District of New York,  
 December 20, 2006). Star Grain considered contracts for the  
 sale of wheat that contained some details about the shipment of  
 the wheat such as, "the conditions under which the shipment and  
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unloading of the wheat should occur," and how demurrage costs  
 were to be calculated. See pages 1 to 2 of this opinion. The  
 court held that despite these details, the contracts' "primary  
 objective was undoubtedly the sale of wheat," not "the  
 transportation of goods at sea," at page 9.

Similarly, in Shanghai Sinom Import and Export v.  
 Exfin (India) Mineral Ore Company, 2006 A.M.C. 2950, (Southern  
 District of New York 2006), an oral opinion, this court, that  
 is I, considered a contract for the sale of iron ore that also  
 included maritime provisions "requiring the ore to be shipped  
 by sea and specifying certain requirements regarding the  
 conditions for such shipment." 2006 A.M.C. at 2950. Noting the  
 dangers of interpreting federal maritime jurisdiction too  
 broadly, this court decided it did not have jurisdiction  
 because the contract was "essentially a land-based contract for  
 the sale of goods," at page 2954.

Although the contracts here clearly contemplate  
 shipping, the bulk of the contracts are devoted to defining  
 terms of sale rather than terms of transport. The fact that  
 the movement of the goods over sea is essential to the  
 performance of the contract does not by itself make a contract  
 maritime. If that were so, then any contract for the sale of  
 goods between countries on different continents would become  
 maritime law. The court does not find support for so broad an  
 interpretation of its maritime jurisdiction. For similar  
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reasons, that the contracts for sale of goods incidentally  
 specify some terms of transport does not make their principal  
 objective a maritime one.

The second basis for admiralty jurisdiction, however,  
 is where the dispute "arises from a breach of maritime  
 obligations that are severable from the nonmaritime obligations  
 of the contract." That is to say, to the extent that the  
 contracts here are mixed contracts, if the dispute concerns  
 those parts of the contracts that are maritime in nature, then  
 this court has jurisdiction. Because the dispute does concern  
 those parts of the contract that are maritime in nature, this  
 provides a basis for the court's jurisdiction.

The dispute here centers on the payment of demurrage  
 that resulted from delays in the discharge of ships' cargoes at  
 their destination ports. Resolution of the competing claims  
 required the arbitration panel to analyze a number of  
 obligations under the contracts. These included provisions  
 relating to the assignment of discharging costs, conditions for  
 the commencement of discharge, the calculation of demurrage  
 rates, and the parties' obligations under related bills of  
 lading, letters of credit, and a charter party. See, for  
 example, the interim final arbitration award, Exhibit 7 to the  
 plaintiff's letter of July 7, 2008 at pages 7, 17, 19, 24, 33,  
 and many other places.

Such obligations fall squarely within the court's  
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1 admiralty jurisdiction. In deciding whether obligations are  
2 maritime in nature, the test is, "whether the subject matter of  
3 the dispute is so attenuated from the business of maritime  
4 commerce that it does not implicate the concerns underlying  
5 admiralty and maritime jurisdiction." That is from Atlantic  
6 Mutual Insurance Company v. Balfour MacLaine International  
7 Limited, 968 F.2d 196, page 200, (Second Circuit 1992).  
8 Far from being attenuated from the business of  
9 maritime commerce, discharge of cargo, calculation of  
10 demurrage, bills of lading, and letters of credit are subjects  
11 intimately connected to the business of maritime commerce.  
12 Federal adjudication of disputes over such matters serves the  
13 goals of admiralty jurisdiction in providing "a neutral federal  
14 forum and a uniform body of law to adjudicate rights and  
15 liabilities as they relate to the trafficking of sea-faring  
16 vessels," from the same place in the Atlantic Mutual case.  
17 Consequently, admiralty jurisdiction is warranted over disputes  
18 between the parties arising out of these obligations.

19 Reference to the contract at Exhibit 1 clearly  
20 provides for a variety of obligations that the buyer in this  
21 case undertook, which are not simply obligations to pay but are  
22 obligations to see to certain performance, and that performance  
23 relates to things like how the vessel should discharge, how lay  
24 time should be treated, even what the water draft should be at  
25 the port of discharge, and furthermore, the parties then

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1 incorporate additional provisions from an underlying charter  
2 party.  
3 Mr. DeMay argues, as a very well made argument,  
4 indeed, that these are simply conditions of payment. But, of  
5 course, all conditions between commercial parties, maritime and  
6 otherwise, boil down to agreements to pay if the conditions  
7 that are established are not satisfied. And these are no  
8 different in that regard from any other provision that  
9 specifically requires that vessels be discharged in particular  
10 ways. All such provisions boil down to an agreement to pay  
11 damages or pay costs in some way if those conditions are not  
12 met.

13 The question is: what are you paying for? And here,  
14 it seems clear, that what the buyer is agreeing to do is to pay  
15 certain specifically maritime obligations are not met, or to  
16 pay for particular shipping costs, to be calculated in ways  
17 that, quite understandably, are referred to arbitrators with  
18 expertise in admiralty matters, who then proceed to decide the  
19 case by reference to various maritime commercial concepts.

20 Anyone who reads the arbitration agreement, it seems  
21 to me, is forced to the conclusion that what these parties are  
22 disputing in this case is nothing related to the sale of sugar  
23 but is everything related to the proper conduct of the vessel  
24 with respect to discharging the conduct.

25 Now, the parties have cited a number of district court  
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1 cases. And, of course, it's worth remembering that none of  
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 these cases, whoever cites them and whichever side they seem to  
 fall on, are binding authority in this court. Nevertheless,  
 the court respects the value of consistency and the importance  
 of considering those cases and specifically respects the  
 expertise of the judges who decided them.

So, I have considered those cases. And it seems to me  
 that the holding in Star Grain, the principal case on which the  
 defendant relies, is not really to the contrary. That case was  
 similar to this one insofar as the claim there was also for the  
 payment of demurrage. However, as I read the case, the claim  
 in Star Grain arose not out of a specific obligation in the  
 contract with regard to demurrage but ultimately from a  
 standard contract term that assigned the risk of loss of goods  
 during transit to the buyer. See page 14 of 2006 U.S. District  
 Court LEXIS 91636.

Because the demurrage was the result of damage to the  
 goods during transit, the dispute centered on this standard  
 nonmaritime contract term and not on parts of the contract that  
 were, "uniquely maritime," quoting from page 12 of the opinion.

Now, it's not entirely clear to me that the uniquely  
 maritime standard applied in Star Grain is exactly consistent  
 with the standard laid down by the Second Circuit in Atlantic  
 Mutual Insurance, which seems to me to put the burden to some  
 degree -- the presumption in the other direction saying that

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the provisions are not maritime if they are so attenuated from  
 maritime commerce as opposed to that they are only to be  
 considered maritime if they are uniquely maritime.

It may be that the court in Star Grain applied a  
 narrower rule of maritime jurisdiction than the Second Circuit  
 law justifies.

But this case is sufficiently different from Star  
 Grain that I don't have to decide in any way whether I would  
 decide Star Grain the same way as Judge Daniels did. This case  
 concerns obligations that are common and instrumental features  
 of maritime contracts and not terms that are typical features  
 of contracts for the sale of goods generally.

Accordingly, it's hereby ordered that the defendant's  
 motion to vacate this court's April 15, 2008 ex parte order for  
 process of maritime attachment is denied.

Now, Ms. Orozco, one of the things I always wonder  
 about with these maritime attachment cases is when do they end?  
 what typically happens, it seems to me -- and again, I'm hardly  
 an expert in this stuff -- is that a plaintiff brings an action  
 in this court and seeks maritime attachment by way of gaining  
 security, and then doesn't really have any intention of  
 following up the case. Here, the case is decided in some other  
 forum, usually an arbitral forum. And in this case if I have  
 the timing right, the arbitration actually happened in the  
 first place and then this was sought in aid of execution of the

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judgment.

Is this a tempest in a teapot? Do you have money?  
 And if so, how much do you have? And what happens by way of --

MS. OROZCO: Procedurally, we actually have not  
 captured any funds yet. But what the intention would be, would  
 be that in the event we capture funds, we would move to confirm

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 8 the award in this court. And once the award is confirmed,  
 9 which we have no reason to believe it would not be confirmed,  
 10 it's a London arbitrating, then we would move to secure any  
 11 security to satisfy that New York judgment.  
 12 THE COURT: But how long does this go on? I don't  
 13 know -- I gather from the fact that Mr. DeMay is here, that the  
 14 defendant exists and has ongoing business and can afford to  
 15 retain a lawyer to engage in this dispute. So maybe some day  
 16 some money will show up in this district.  
 17 But, one thing that has concerned me, both from a  
 18 very, perhaps, pedantic concern for the court's docket, to a  
 19 more substantive concern about the nature of these attachments,  
 20 is that it's one thing to attach property that's here, even if  
 21 that is intangible property. It's another thing to have a sort  
 22 of open-ended order that will attach something someday if it  
 23 should appear when there is no particular reason, other than  
 24 the fact that a lot of money comes through New York, to assume  
 25 that it's ever going to.  
 Now, I've had to deal with this issue in other cases  
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 1 and it seems to me the Second Circuit law is clear that these  
 2 prospective attachments are valid. It seems to me that the  
 3 underlying Second Circuit cases are ones precisely in which the  
 4 district court issued an order saying you could attach some  
 5 money transfer when nobody actually was aware of a particular  
 6 transfer being there. So, the validity of this I take as  
 7 established by circuit case law, but I don't think, as far as I  
 8 know, that the circuit has addressed: Is this open-ended  
 9 forever, or at what point is it perfect for a court to say:  
 10 But there ain't no property to attach, and there never has  
 11 been, and it's unclear when, if ever, there will be, and why  
 12 don't we just close this up.  
 13 Now, this one hasn't been pending for very long and I  
 14 don't know that we're close to any point of whatever it might  
 15 be of closing it down. But, do you have any thought or  
 16 suggestion as to when this just becomes ridiculous?  
 17 MS. OROZCO: I do, your Honor. Actually it's an issue  
 18 that we deal with. Our general rule of thumb, if we have not  
 19 caught any funds after about six to eight months -- depending  
 20 upon what type of information we can find that confirms that  
 21 the defendant is still in business or that they are not in  
 22 business or that there are eight other attachments -- if we  
 23 haven't caught funds after about the six-to-eight-month period,  
 24 we generally recommend to our client that we dismiss without  
 25 prejudice. In the future if you have information; you discover  
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 1 they are trading, they are liquid, we can revisit, perhaps  
 2 reopening the file. But that is our general recommendation for  
 3 the same reason of it's overwhelming the courts. It's  
 4 overwhelming to us, and it's daily service -- it's throwing  
 5 money -- the client spends money for daily service and they are  
 6 getting nowhere. And if the company is really not trading,  
 7 there's really no point. The attachment is there.  
 8 It can be -- we've had cases where we've dismissed the  
 9 attachment and then we've gotten information and refiled and  
 10 we've caught money within 30 days, but it's generally -- we do  
 11 put an end to it. We go back to our clients and say, look,  
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 13 this is -- you know.  
 14 THE COURT: Well, of course, that's what you do and  
 15 you're free to do as you like. The question is --  
 16 MS. OROZCO: As are you?  
 17 THE COURT: Well, that's the question. Am I? Is this  
 18 solely a matter for my discretion, or are there any rules that  
 19 ought to apply here?  
 20 Now, at this point -- I just said the date, now I'm  
 21 forgetting. It was April --  
 22 MS. OROZCO: April 12 it was issued. I believe we  
 23 started serving April 15.  
 24 THE COURT: So, it's been four months and nothing has  
 25 turned up yet. Certainly six months sounds like to me  
 relatively an outside period unless there is some evidence that  
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 1 something is likely to happen now.  
 2 Again, I suppose it's possible that a party could try  
 3 to simply avoid New York for a period and then if something  
 4 gets vacated resume normal business practices. I doubt that  
 5 would be easy to do, but maybe it's possible.  
 6 And I suppose, further, that absent the process of  
 7 daily service and having an open order, you would never really  
 8 have any way of knowing whether that's resumed.  
 9 At any rate, it seems to me that come October this is  
 10 going to be vacated anyway if there is not some success in  
 11 attaching something. And I don't know any way of dealing with  
 12 this kind of problem other than by rule of thumb of that sort.  
 13 Mr. DeMay, do you have a thought or -- this is a  
 14 different issue than what you all came here to talk about,  
 15 but --  
 16 MR. DeMAY: Your honor, I've been on both sides of the  
 17 transaction. I take it as a given that no Rule B case would be  
 18 allowed to remain open-ended.  
 19 THE COURT: I should think not.  
 20 MR. DeMAY: My understanding is that under Rule 4,  
 21 there's a 120-day limit for service of process. If the  
 22 defendant is one on whom service of process can be made in the  
 23 United States, I think that 120-day rule probably would apply  
 24 absent good cause. If the defendant is located overseas, my  
 25 understanding is the 120-day rule does not strictly apply.  
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 1 It's up to the court's discretion; may be applicable in a case  
 2 where the defendant is located in a western nation where  
 3 service can easily be made.  
 4 But my understanding is that Rule B is essentially  
 5 equitable in nature. It's subject to the court's discretion.  
 6 The court can limit the attachment; it can vacate an  
 7 attachment. So I would read into that, that the court has  
 8 inherent power, after a passage of time that the court deems to  
 9 be reasonable, to decide that there is no point in continuing,  
 10 that the case would have to be dismissed without prejudice.  
 11 THE COURT: Well, that sounds about right to me. I  
 12 think what I've done in the past -- and I don't know whether  
 13 there's ever been a particular time -- but once I started  
 14 seeing these things piling up on the docket, I did a little  
 15 project of just issuing orders saying tell me what's going on.  
 16 And it turned out that most of the plaintiffs had attached  
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18 something during that period and we just didn't know about it.  
19 So, they weren't totally dormant. But it seems to me that some  
20 sort of time limit is appropriate.

21 And I guess it sounds as if the practice at the bar so  
22 far has been not to include such a time period, an expiration  
23 date in the order of attachment itself. And that makes some  
24 sense. It may be that leaving this to case-by-case issues and  
25 allowing the plaintiff an opportunity to explain why they  
think, if they do, that the order should be extended after some

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1 period of time, is the best way to go.  
2 But at any rate, what I'm indicating is you can expect  
3 that come October either this will be vacated outright or I'll  
4 be at least asking the plaintiff for some account of is there  
5 any reason they can think of why this should go on. Of course,  
6 it's my expectation that the defendant will say no, it  
7 shouldn't. And barring some new news, this dispute is resolved  
8 now only for the next two months and it may well be that  
9 today's order is largely academic.

10 All right. Thank you very much.  
11 MS. OROZCO: Thank you, your Honor.  
12 MR. DeMAY: Thank you, your Honor.  
13 (Adjourned)  
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